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THE
AMERICAN ELECTORAL SYSTEM

BY

CHARLES A. O'NEIL, LL.B

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TO

FREDERICK A. P. BARNARD, S.T.D., LL.D., L.H.D.

PRESIDENT OF COLUMBIA COLLEGE

THIS LITTLE VOLUME IS RESPECTFULLY DEDICATED

BY HIS GRATEFUL FRIEND

THE AUTHOR

PREFACE.

THIS little work is presented to the public with a view of awakening interest in a subject of the greatest importance. A discussion of the relative merits of various plans of choosing a President, and especially the merits of the present plan, never fails to excite the interest and engage the attention of the inquiring and patriotic citizen.

The prevailing discontent with the present process is doubtless a sufficient apology for the appearance of this work. No one can adequately appreciate the dangers with which the nation is threatened without a knowledge of the workings of the electoral law in the past. Many of the details of that history must necessarily be repetitions. Some have ceased to be of practical utility, for the precedents established have become unwritten law. The United States is not so rich in historical matter as to justify an omission to trace step by step, year by year, the growth and establishment of fixed principles of law, appertaining to the great central office in our Federal government, and especially to point out prominently, by the light of the past, the snags and pitfalls which lie in the path to the "White House." The literature on this subject is very meagre. Prior to 1876 we have nothing in the shape of books, and rarely any thing in magazines. Since that time the discussion has been confined principally to the power of counting the electoral votes, and to

the regulation of the succession to the presidency in case of the death or other disability of the President. The books that profess to give a history of presidential elections have, it seems, failed to grasp the subject. The sources of my information have been the newspapers from 1788 to 1877, local histories, lives and letters of public men, congressional debates and documents, and *Niles' Register*. The recognized standard histories of the United States are almost a blank on this important subject. The slight reference made at times to certain points arising under the electoral law serves only to obscure, not elucidate, the subject.

CHARLES A. O'NEIL.

NEW YORK, *May 17, 1887.*

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AMERICAN ELECTORAL SYSTEM.

CHAPTER I.

INTRODUCTION.

UNDER every form of government, nothing is of so great importance as the regulation of the succession to the chief magistracy. In kingdoms and empires, the stability of government and the preservation of order depend in a great degree upon a faithful adherence to the established rules of succession, and in republics upon the knowledge that the Executive of the nation has been chosen by a fair and satisfactory method, and that he is the choice of the great body of the people. At the present day, the American people are confronted with the fact that the weakest point in their plan of government is the mode of choosing a President. The press has for it only words of censure. The foreign critic refers to it as a good illustration of the practical tendencies of a theoretical paper constitution. To complete the contrast, not a single voice ascends from the ranks of either of the two great political parties in its favor. Yet the sixty-seventh number of the *Federalist* opens with the statement that this mode "is the only part of the system of any consequence which has escaped without severe censure, or which received the slightest mark of approbation from its opponents."¹ The plan thus

¹ See page 27 for an account of the *Federalist*.

differently criticised is the American Electoral System, a system which contemplates the intervention of agents in the selection of a President. To many this appears to be an anomaly in American political science. A slight reflection, however, will convince them that this mode is in perfect harmony with the spirit of the United States Constitution. With the exception of the members of the House of Representatives, no person holding office under the United States government derives his appointment directly from the people.

The word "elector" in this connection is one of great historical meaning and interest, on account of the remarkable coincidence of the establishment of electoral colleges in the States, and the existence in past ages of intermediate bodies, called together for the purpose of choosing a chief magistrate. It had been the prevailing custom, sanctioned by time, to devolve this duty upon a small and select body of men. We know that the Polish Diet elected the king of Poland; that the emperor of Germany was chosen under the Germanic constitution by an electoral college, and that the choosing of the Supreme Pontiff of the Christian world has, from time immemorial, fallen upon a small body of men.

Hereditary monarchy had no charms for the sturdy heroes and the statesmen of the Revolution, but the same heroes and statesmen, as framers of the Constitution, would not tolerate the idea of allowing the entire population to take a direct part in the election.

From the pages of history, they had learned that in the ancient republics of Greece and Rome, tumults, riots, and wide-spread disorder had followed in the train of popular elections. They also feared that the people would not only be unable to discriminate in the character and quali-

fications of the candidates, but would be influenced and controlled in their choice by powerfully organized societies. A prediction was made by a member of the Federal Convention, that in a direct vote by the people, the order of "The Cincinnati" would practically make the choice. This apparent want of confidence in the intelligence of the people was, however, shared by few; for some of the most bitter opponents of a popular election were considered in their own States to be most extreme in advocacy of popular rights.

The real obstacle was the dread of consolidation, which swayed the minds and biased the opinions of almost all the local politicians, and especially had sunk deeply into the hearts of the people.

It must be remembered that the Constitution was formed during the dark and humiliating days of the "Confederation." Few public men of that day understood, with sufficient accuracy, the distinction between "nation" and "government," "sovereignty" and "powers."

The theory of State sovereignty was assumed as true and valid by all the States. The Massachusetts constitution of 1780 declares that the people of that "commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent State,"¹ with certain limitations there laid down. This language is similar to that in the "Articles of Confederation":²

"Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled."

¹ "Poore's Constitutions," vol. i., p. 958; Art. III. of Constitution.

² *Id.*, p. i.

A sovereign nation and a limited national government were thought impossible. In rightfully opposing all projects of consolidation of the powers of sovereignty, they naturally fell into the error of opposing plans which tended to the strengthening of the bonds of union, and the developing of a broader national spirit.

Jealous opposition to the granting of too much power to the general government led them to oppose a plan of electing a President which would make him the representative of the whole nation.

Apart from this consideration, one reason, purely sectional, existed which made a popular election impossible. The slavery problem was an important element in the framing of any plan. The Southern States, with their system of slave labor, would be threatened with the loss of their relative influence in the nation, because a large portion of their population could not be trusted with the ballot.

The foregoing remarks will convey a general idea of the great difficulty of framing a perfect, consistent plan of election, which would receive the support of the people of that day, and be still acceptable at the close of a century of political struggles and of enormous material development.

This great task was devolved on the men who had passed through the ordeal of the Revolution. During that period and the years of the Confederation, the want of an Executive in the central government was strongly felt. Its danger was lessened to some extent in the Revolution, by the exercise of summary executive powers by the Commander-in-Chief of the Continental army.

When peace came in 1783, prosperity did not follow. The army was disbanded, the navy dismantled, the public

credit prostrated; and commercial discord prevalent among the States. Foreign nations refused to make treaties with us, through our inability to carry out existing treaties.

The good order of society was disturbed by the frequent occurrence of local riots, owing to the demand of the soldiery for their pay, and to the opposition of debtors to the execution of judicial decrees. In Massachusetts, the discontent became so general as to assume the magnitude of a rebellion. The American people were fast drifting to chaos and anarchy. Such a condition of affairs could not last long. A heroic remedy was required, for no timid, half-way measure would suffice. The governmental machinery of "the United States in Congress assembled" had completely broken down. The dream of the separatist was realized in 1786. Each commonwealth was practically its own master, and acknowledged no superior. The so-called central government, "The United States in Congress assembled," was invested with only the most limited powers, which could not be exercised without the consent of nine States. The government was in form legislative, and its laws were simply recommendations, no coercive powers having been granted to it. Every provision calculated to weaken the bonds of union was inserted in the Articles of Confederation. The omission to give to the general government control over commerce, was a fatal mistake, and brought upon the country great suffering. But the chief underlying defect in the Articles of Confederation, was the assumption of sovereignty in the individual State, an assumption which had no legal or historical basis. This assumption was accompanied by an intense jealousy of every thing tending to strengthen the national idea.

In our struggle for independence, we were "one people"¹; our soldiers in the field were enlisted in "a Continental army." We were all then citizens of a common country, struggling for independence, as we had formerly been subjects of the crown of Great Britain and Ireland.

The Articles of Confederation had, it is true, been drafted and adopted in the war time, but they were not adapted for peaceful, much less for warlike, times. An efficient national government was an absolute necessity; a statesmanship of the highest character was required,—a statesmanship that breathed no local or selfish aspirations.

Reform was impossible on the basis of amending the Articles of Confederation. The steps taken to remedy these evils need not be here recounted. The meeting at Annapolis, of commissioners appointed by five States to take into consideration the trade and commerce of the United States, reported² that "it may essentially tend to advance the interests of the Union, if the States by whom they have been respectively delegated would themselves concur and use their endeavors to procure the concurrence of the other States in the appointment of commissioners to meet at Philadelphia on the second Monday of May next, to take into consideration the situation of the United States, to devise such *further* provisions as shall appear to them necessary to render the Constitution of the Federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled, as when agreed to by them, and afterwards confirmed by the legislature of every State, will effectually provide for the same."

¹ See opening lines of Declaration of Independence.

² "Statesman's Manual," vol. ii., p. 1506.

The Congress of the Confederation, on February 21, 1787, in accordance with the recommendation of the Annapolis meeting, resolved that "in the opinion of Congress, it is expedient that on the second Monday of May next, a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alteration and provisions therein as shall, when agreed to in Congress, and confirmed by the States, render the Federal Constitution adequate to the exigencies of the government and the preservation of the Union."¹

The convention met in the month of May, 1787, in Philadelphia. The States were not represented by an equal number of delegates, but this apparent inequality made no difference; for the State, and not the individual, was the unit in the roll-call of the convention. The convention was rich in historic names, and well represented the talents and patriotism of America. It was an age of unrest. The thrones of Europe were tottering. The experiment of self-government by the people was now to be made a living realization. The attention of the whole country was directed to the proceedings of this convention. Its deliberations were held in secret.

The convention, with fitting propriety, elected, as its presiding officer, George Washington.

¹ "Statesman's Manual," vol. ii., p. 1506.

CHAPTER II.

THE FEDERAL CONVENTION.

IT is reported that James Wilson, of Pennsylvania, used the following language in the convention held in that State to consider the question of ratifying the proposed Constitution: "The convention, sir, were perplexed with no part of this plan so much as with the mode of choosing the President of the United States."¹ With good reason was this remark made, for never were a body of men charged with greater responsibilities, or confronted with greater difficulties, than the members of the Federal Convention. Nothing like unanimity prevailed. Plans widely differing in character were presented to the Convention, ranging from the monarchical to the popular. Hence we must not harshly judge the final action of its members. The history of past ages afforded them no real substantial aid in their arduous labors. Undoubtedly, they had learned the great danger of making the Executive dependent on the legislature. The case of William III. of England, so near their own time, must certainly have been before their minds; yet, notwithstanding the earnest opposition of some of the best men, an election by the legislature seemed inevitable, mainly from the inability to agree upon another mode. In some of the American States governors were chosen by the legislatures,² in

¹ "Elliot," vol. ii., p. 511.

² Delaware, Georgia, Kentucky, Maryland, New Jersey, Pennsylvania, South Carolina, Virginia, and North Carolina.

others by the people. The Executives chosen in the latter mode proved to be more independent than those chosen in the former mode.

In Randolph's plan of government submitted on May 29, 1787, a "National Executive" was to be chosen by the "National Legislature."¹ From that day until the 4th of September, nothing definite was accomplished. On one day a plan would be accepted; on another, the same plan would be rejected. At times, the subject of an Executive would be postponed for many days.

On the 2d of June, the Convention, by a vote of eight to two States, adopted the plan of a congressional election.² The report of a committee proposing the same plan was sustained on the 17th of July.³ A change was made on the 19th, to which reference will be made hereafter. On the 24th, the Convention, by a vote of seven to four, decided to commit to Congress the power of choosing a President.⁴ A committee appointed on that day made a report on the 6th of August, in which it was provided that the Executive should "be elected by ballot by the legislature."⁵ On the 24th, while the report was under discussion, two motions were adopted, which provided that the President should be chosen by a majority vote in a joint meeting of the two Houses. On the various above-mentioned dates, members endeavored to obtain a favorable hearing for their own favorite measures. Wilson advocated the electoral-district system.⁶ Gouverneur Morris wanted the Executive chosen by a purely national process, namely, "by citizens of the United States."⁷ Carroll leaned to this view,⁸ as also did Franklin. The lat-

¹ "Elliot," vol. i., p. 145.

⁴ *Id.*, p. 217.

⁶ "Elliot," vol. v., p. 143.

² *Id.*, p. 157.

⁵ *Id.*, p. 227.

⁷ *Id.*, p. 322.

³ *Id.*, p. 208.

⁸ *Id.*, p. 472.

ter plan would have been supported by Madison had not one fatal objection been brought against it, "the character of the suffrage" in the South.¹ The electoral system was then favored by him. The same system, restricted to not more than three electors for each State, was proposed by Ellsworth. Sherman and Rutledge were prominent upholders of the plan submitted by Randolph. Hamilton placed before the members a plan which bears the strongest resemblance to the one finally adopted. Each State was to be entitled to as many electors as it had Senators and Representatives, and was to be divided into as many districts. A second electoral body was also to be created, for the purpose of balloting a second time in case no one had received a majority of electoral votes. A plurality vote was to suffice in the latter case. The strictly national plan of Morris received the support of only one State. Gerry's proposal, that the Executives of the several States should choose the President, shared the same fate. On the 17th of July, a motion was offered that the President be voted for "by electors to be appointed by the several legislatures of the individual States."² It was defeated by a vote of eight to two States. On the 19th and 20th of the same month, the Convention seemed to have lost confidence in an election by the legislature. Their action on previous occasions was reconsidered. It was determined, by a vote of six to three States, that the Chief Magistrate should be chosen by electors appointed for that purpose. The choice was to be made by the State legislatures.³ The plan adopted on this occasion derives its chief importance from its resemblance in its main features to the present system.

¹ "Elliot," vol. v., pp. 337, 363.

² "Elliot," vol. i., p. 208.

³ *Id.*, p. 211.

The apportionment of electors was very unfair, and betrayed the old feeling of State jealousy. The States with a population less than one hundred thousand were to have one elector; those with a population less than three hundred thousand were to be entitled to two electors; while three electors were to be allotted to the remaining States.

Within the course of a few years under the operation of such a law, the country would have groaned under a weight of injustice.

It was unanimously agreed that "the electors of the Executive shall not be members of the National Legislature, nor officers of the United States, nor shall the electors themselves be eligible to the Supreme Magistracy."¹ The electors were to be paid by the United States Government. During these two days the members freely gave their assent to an election by a temporary electoral body, made provision for choosing and paying the electors, and even placed certain restrictions on the persons to be chosen; yet, in a few days, the Convention struck out the whole plan and substituted an election by Congress.

About a month later, Aug. 24th, the opinion of the members was tested in a motion that the President "shall be chosen by electors to be chosen by the people of the several States."² The Convention, by a majority of one, declared itself opposed to the proposition. All was uncertainty. No progress had been made. The dangerous and unpopular method of choosing a President by the National Legislature was still considered the only one possible for the country. Was the American republic to be cursed with a weak and dependent Executive? Was the office of President to become the object of congressional intrigue and corruption? Yet, all hope was not gone.

¹ "Elliot," vol. i., p. 213.

² *Id.*, p. 262.

Nationalism had several earnest champions in the Convention. On the last day of August, the consideration of the clause relating to the Executive was postponed, and, together with some other matter, was referred to a committee of eleven. The report of this committee, received on the 4th of September, was, in a marked degree, in advance of all previous reports or propositions. It was a revolution from the old plan, and after undergoing a few alterations became a part of the proposed Constitution.

The clause directing how electors should be chosen, was adopted by a vote of nine to two States.¹ As far as can be learned, no remarks were made on the meaning to be put upon this clause. It bears a close analogy, however, to a provision in Art. V. of the Articles of Confederation, and may have been purposely so worded. "Delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress."² Under the workings of that article, delegates were chosen by the State legislatures. Elsewhere will be discussed the power of the State legislatures.

Certain limitations were put upon the State as a body politic in its choice of electors. In the report of the 4th of September, the qualifications of electors were not mentioned, but on the 6th, it was resolved, *nem. con.*, "that no person shall be appointed an elector who is a member of the Legislature of the United States, or who holds any office of trust or profit under the United States."³ This clause means something, for it is in perfect harmony with the principle which guided the members in their scheme of an election of the Executive. It aims at the exclusion of all undue influence on the part of Congressmen and Federal

¹ "Elliot," Phil., Lippincott & Co., 1876, vol. i., p. 288.

² "Elliot," vol. i., p. 80.

³ *Id.*, p. 287.

office-holders in choosing a President. The negative words following the grant of power are significant. An examination of the limitations imposed by the Constitution, discloses the fact that there are two kinds of constitutional limitations: one is in force from the moment of election, while the other does not apply until the oath of office is taken. Art. I., Sec. 2, Par. 2, is a good illustration: "No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, *when elected*, be an inhabitant of that State in which he shall be chosen." The disqualifying words as to age and citizenship may be compared with those found in the Fourteenth Amendment relating to electors: "No person shall be an elector of President and Vice-President who, having previously taken an oath . . . shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof"; while the remainder of the paragraph, relating to inhabitancy, appears to have the same meaning as the limitation in the old Constitution concerning electors, which has caused so many disputes. The former attaches to the person of the elector, but the latter is addressed to the State in its corporate capacity, whereby the State in exercising its power is limited in its action—that is, it is not at liberty to appoint persons indiscriminately out of the mass of its citizens.

The illegal appointment of a Federal office-holder cannot be remedied by resignation, but the removal of the disabilities of a disloyal person before the day of the assembling of the electors will, it seems, make the election valid. In the course of this history, the reader will see that the question is complicated by the wording of State

and congressional statutes providing for the filling of vacancies in the electoral colleges.

A change of language was made in the report in regard to the place of counting the votes. In the report, we read: "The President of the Senate shall, in that House, open all the certificates, and the votes shall then and there be counted."¹ On the 6th of September, it was moved and carried, that the words "in presence of the Senate and House of Representatives" be inserted after the word "counted."²

There is a very great difference between the meaning of this sentence and the one found in the Constitution. The Republican minority of the House committee, in their report of Jan. 12, 1877,³ claimed that this sentence was never changed by a vote of the Convention, and that its revision by the committee which was appointed on the 8th of September must be considered "as a more concise and elegant form of conveying the expressed understanding of the Convention." Under such a construction of the Constitution, the votes ought to be counted in the Senate-chamber, and could not be counted by the two Houses, because the act of counting was to be performed in their presence. That act must *ex necessitate rei* be performed by the President of the Senate. The argument hardly deserves an answer. The adoption of the Constitution as a whole, its ratification by the American people, and the practice under it for many years, are sufficient evidence that the present form of expression must be followed.

Another discrepancy is noticed in regard to the grant of powers to Congress between the report of the "Com-

¹ "Elliot," vol. i., p. 283.

² *Id.*, p. 289.

³ "Cong. Record," vol. 5, part 2, p. 857. 44th Cong., 2d sess.

mittee of Detail ” and that of “ Revision.” In the report of the former, September 4th, we read : “ The Legislature may determine the time of choosing and assembling of the electors and the manner of certifying and transmitting their votes.¹ The “ Committee on Revision ” omitted the latter part, and changed and qualified the language of the former.² It has been claimed by some the non-appearance of the omitted part is an implied denial of any power in Congress to prescribe the manner of the authentication of the electoral votes. In case of failure to elect by electors, the Senate was empowered to choose the President and Vice-President. During several days the report was thoroughly discussed. Every one seemed to be earnestly impressed with the gravity of the situation. All the evils in the plan were exposed. The chief objection was raised against the idea of allowing the Senate to make the second choice. As it was the prevailing opinion at that time that, on account of the conflicting interests of Eastern, Middle, and Southern States, no candidate would be able to obtain a majority of votes, and therefore in a majority of cases the choice would fall to the Senate.

Practically, the same arguments urged against the plan of Randolph could be used here. From the general spirit of the debate, we see that a compromise had to be made between the large and small States. The large States were to nominate the candidates, and the small States in the Senate would have a controlling influence in the eventual choice; hence the attempt failed to choose a President by a vote of one third of the electors; hence all attempts to make an eventual election less frequent, and to secure the predominance of the large States were unsuccessful. Hamilton and Madison thought a plurality

“ Elliot,” vol. i., p. 283, par. 8.

² *Id.*, p. 302.

vote sufficient¹; but a motion to that effect received the support of two States only. The same reception was given to a motion to substitute "three" for "five" for the number of candidates to be voted for in the second election.² Even the very just provision, that a majority of electors should be made to mean a majority of electors "who shall have balloted," was rejected by a vote of seven to four.³ After a tedious discussion, a suggestion was made by Mr. Sherman in a proposition that the eventual election should be made by the House of Representatives voting by States.⁴ The small States would lose no power, while the aristocratic character of the other plan would be avoided; but a great wrong was being perpetrated upon coming generations. The confederate idea had gained the supremacy, and was to be incorporated into the organic law. Mr. Sherman's motion was carried by an almost unanimous vote, but it was soon perceived that in the absence of any provision for a special quorum, the object aimed at by the motion could not be attained. The defect in the motion had been shown in good faith by Madison; yet the small States ungratefully refused to compromise on the question of a quorum. Rufus King, member from a large State, proposed a very fair compromise. A quorum was to consist "of a member or members from two thirds of the States, and also of a majority of the whole number of the House of Representatives." Of course, the Federal quorum was accepted, but the national quorum to equalize somewhat the surrender of the large States was opposed with great earnestness. Five States voted in its favor, while six opposed it.⁵ On examining the vote, we see that the first four States in

¹ "Elliot," vol. v., pp. 514, 515.

² "Elliot," vol. i., p. 278.

³ *Id.*, p. 287.

⁴ "Elliot," vol. v., p. 519.

⁵ *Id.*, p. 520.

order of population were among the affirmative. Shrewd, far-sighted men, seeing the great evil of allowing one man to cast the vote of a State, endeavored to obviate the danger by providing that no State shall vote by less than three members, and to make that number one or two Senators from that State should be called in. This wise suggestion was allowed to be withdrawn without any remonstrance. It was unanimously agreed that a majority of all the States was necessary to elect a President. On this occasion Madison raised his voice against the insertion of this wretched contrivance, and with justice did he declare "that the representatives of a minority of the people might reverse the choice of a majority of the States and of the people."¹

In the electoral colleges, the votes are recorded per capita; in the House of Representatives, by States. In the former process, two elements enter: one of State equality, the other of population; giving a decided preponderance to the large States, which, as time rolled on, would become still more marked. So great a departure from the confederate character of the late government could not be endured without some corresponding "equipoise," and that was found in the eventual election by the House. When we recollect that all public business was transacted by Congress from 1775 to 1789, voting by States, the adoption of the same mode in recording the will of the House is not surprising. In the early days of the republic, one of the usual arguments against any change leaning to nationalism was that the large States would combine to the disadvantage of the small States. The impress of these narrow views of our political system is noticeable in many parts of the Constitution.

¹ "Elliot," vol. v., p. 521.

Length of Tenure.

As long as the Convention favored an election by the National Legislature, a general opinion seemed to prevail that the Executive must hold his office for a term sufficiently long to make him independent of Congress, and that the very idea of a legislative election effectually disposed of the question of re-eligibility. It is not then a matter of surprise that when the convention on different occasions voted for a legislative choice, a provision was added that the Executive was to hold his office for seven years, and be ineligible for a second term. Yet few could reconcile their notion of an efficient magistrate hampered with such a restriction. A President, holding his office under such circumstances, was considered by Hamilton to be no better than a "monster." Wilson declared that ineligibility was "an infringement of the right of election."

Sherman and others, while favoring a legislative election, could not be induced to support their own plan with ineligibility attached.

Throughout the debates, it was seen that a term of four years was thought to be the safest for the country. Toward the closing days of the Convention, the members were convinced that a radical change had to be made to insure a strong Executive. Having partially removed the fear of dependence upon the legislative power, by the adoption of a semi-popular mode of election, they were enabled to act rationally upon the question of the length of tenure. Motions, aiming at terms of six or seven years, were alike rejected, while a term of four years, with an implied approval of re-eligibility, was accepted as a fair compromise. It did not please everybody, for Jefferson thus wrote to Madison from Paris, December 20, 1787:

"The second feature I dislike, and strongly dislike, is the

abandonment, in every instance, of the principle of rotation in office, and most particularly in the case of the President. Reason and experience tell us that the first magistrate will always be re-elected, if he may be re-elected. He is then an officer for life. A Galloman or an Angloman will be supported by the nation he befriends. If once elected, and at a second or third election outvoted by one or two votes, he will pretend false votes, foul play; hold possession of the reins of government; be supported by the States voting for him.”¹

That there were advocates of a life tenure in the presidential office during good behavior, is absolutely certain. According to Madison, “a few would have preferred a tenure during good behavior, a considerable number would have done so in case an easy and effectual removal by impeachment could be settled.”²

It has been even claimed that Madison himself was one of its advocates, but the unfairness of stirring up the embers of an old political quarrel in regard to the authorship of a proposed monarchical plan must be admitted by every one who has read Hamilton’s letter to Colonel Pickering, September 16, 1803:

“It appeared to me to be in some sort understood, that with a view to free investigation, experimental propositions might be made which were to be received merely as suggestions for consideration. Accordingly, it is a fact that my final opinion was against an Executive during good behavior, on account of the increased danger to the public tranquillity incident to the election of a magistrate of this degree of permanency.”

It is a remarkable fact, that in not one of the plans submitted to the Convention do we find mention made of a Vice-President. In Hamilton’s plan we read: “On the

¹ “The Writings of Thomas Jefferson,” by H. A. Washington, vol. ii., p. 330. New York.

² Madison to Jefferson, October 24, 1787.

death, resignation, or removal of the governor, his authorities are to be exercised by the President of the Senate, until a successor is appointed.”¹ No provision was made by Hamilton for a case of disability; but in the draft of the Constitution, prepared by the Committee of Detail on August 6th, occurs the following sentence: “In case of his removal, as aforesaid, death, resignation, disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties until another President of the United States be chosen, or until the disability of the President be removed.”²

The word “Vice-President” first appears in Brearly’s report of September 4th,³ and then the clause of succession is altered. The President of the Senate makes way for the Vice-President. A very important contingency is provided for, which does not appear again. The “absence” of the President authorizes the Vice-President to exercise the powers of the presidential office. How can the pardoning power be exercised in an urgent and unquestioned case, when the President is travelling on the sea? In both reports the President’s successor was to exercise his powers until a new election, or the removal of the disability. In the final revision a radical change was made: “In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President.”

It is to be noted that the Constitution speaks in a broad, general way. No exception is made. Yet can it be possible that no distinction is made between death and inability of one month? In the first three cases, the mean-

¹ “Elliot,” vol. v., p. 205, par. 5.

² “Elliot,” vol. i., p. 228.

³ *Id.*, p. 283.

ing is plain that the Vice-President exercises the powers and duties or exercises the office of President, or is President, call his position what you may, until the expiration of the term for which he was chosen. In the case of inability, the widest divergence of views prevails. John Dickinson, of Delaware, exclaimed in the Convention: "What is the extent of the term 'disability,' and who is to be the judge of it?"¹

The question still remains unanswered. The reasons which induced the creation of the office of Vice-President were strong and convincing. The analogy of the office to that of State Lieutenant-Governor was plainly seen. The force of the monarchic principle in the structure of the United States Government was very much lessened. Sectional jealousy would be often allayed by allowing one section a representative in the vice-presidency, and a possible extra vote in the Senate. The necessity of a Vice-President chosen by the same method as the President, is appreciated when a vacancy occurs in the office of President. It was desirable that the Vice-President should invariably be a man of as high a character and of as great ability as the President. This wise forethought was the reason why that each elector was to vote for two persons indiscriminately for President. The Convention proceeded further in regulating the presidential succession.

On the 7th of September it was moved and seconded to insert in the proposed Constitution "the Legislature may declare by law, what officer of the United States shall act as President in case of the death, resignation, or disability of the President and Vice-President, and such officer shall act accordingly until the time of electing a President shall arrive."² The resolution as amended by Madison was

¹ "Elliot," vol. v., pp. 480, 481.

² *Id.*, p. 521.

carried by a vote of six to four States. The original motion contemplated the continuance in the presidential office of this officer for the residue of the term. The amendment limited the time "until such disability be removed, or a President shall be elected." In the revised draft of September 12th, the words "or period for choosing another President arrives," are found. They were rejected by the Convention, and Madison's amendment was readopted. The action of the Convention in limiting the duration of the provisional President's term is in striking contrast with the treatment of the succession of the Vice-President. The qualifications of a President were declared to be: he must be a natural-born citizen or a citizen of the United States at the time of the adoption of the Constitution; of the age of thirty-five years, and been fourteen years a resident within the United States. No qualifications were here attached to a Vice-President. Do these qualifications apply to an "officer" appointed to "act as President" in case of vacancy in the offices both of President and Vice-President. It would seem from the wording of the clause that a naturalized citizen holding the office of Secretary of State can act as President, if authorized by Congress.

CHAPTER III.

THE PRE-CONSTITUTIONAL EPOCH.

THE executive branch of the proposed new government had now been constructed, and a single Executive was its leading feature ; an attempt to make a triple Executive had failed. In later years, John C. Calhoun,¹ to balance the sections, recorded himself in favor of a dual Executive. The proposers of the Convention had not contemplated an Executive independent of the legislature. In fact, the members of the Convention had, at the last moment, taken a bold stand on this and kindred subjects. The work of the Convention was a destruction, not an amendment, of the Articles of Confederation. In like manner a judiciary department of the government, clothed with the most extensive powers, was established. The legislative branch was divided into a Senate and a House of Representatives.

National powers of the most important character were conferred upon the Congress. The States were stripped of the most important elements of sovereignty. The Convention had evidently exceeded its powers ; especially in that part of the proposed Constitution which reads : " The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same," ² for Article XIII. of the Articles of Confederation expressly says : " Nor shall any

¹ Calhoun's, *On the Constitution and Government of the U. S.* " The Works of John C. Calhoun," vol. i., p. 393. Appleton & Co., 1854.

² Art. 7.

alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every State."

A peaceful revolution in the governmental system of the United States was at that time taking place. The leading men of that day were eagerly looking forward to the time when the American people would in fact as well as in name "assume among the powers of the earth" a separate and an equal station.

After a long and tedious struggle, compromise and conciliation had prevailed. A Constitution was now awaiting the adoption of the people. Assuming that the American people would not hesitate in a choice between anarchy and an efficient government, the Convention, in its closing days, passed certain resolutions relating to the manner of beginning operations under the new order of things.

The resolutions, with the draft of the Constitution, were sent to the Confederate Congress; thence to be submitted to conventions of the people in the several States.

One of these resolutions is often quoted as an irrefutable argument in favor of the claim that to the President of the Senate has been given the power to count the votes. In this resolution is found the direction that "the Senators should appoint a President for the sole purpose of receiving, opening, and counting the votes for President."¹ Many a long and labored argument has been based upon this word "counting." The newspapers during the electoral troubles of 1877 were full of letters from correspondents advocating this claim. Whether from party feeling or from sincere belief, several distinguished men have leaned to this opinion. Without discussing

¹ "Elliot," vol. i., p. 307.

whether the President of the Senate can exercise a judicial function, or can count only what are decided by Congress to be votes within the meaning of the Constitution, it needs only to be remarked, that the language which immediately follows should be considered: "After he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute the Constitution." It does not say that after he is chosen he is immediately to count the votes and declare who are elected, but it says that two things must be done. First, a President *pro tem.* must be appointed; and secondly, Congress and the President must execute the Constitution. According to the strict letter of this resolution, neither the President nor Congress can act separately. That the resolution cannot be taken as an infallible interpreter of the meaning of the Constitution, is seen from the use of a certain word in the beginning. The Constitution speaks of "the time of choosing the electors," while, according to the resolution, the electors were to be chosen on a certain "day." Some might say that this latter precedent was not binding upon the Congress of the new government. If not, why should the regulation of the proceedings in counting the votes be followed? These precedents, it may be truly said, belong to the pre-constitutional epoch, and ought not to be cited as authority.

The work of the Convention was now finished. The Constitution had been drafted, and explanatory resolutions had been drawn up, but the final success of the new plan of government was not yet assured. A bitter contest must be fought in the State conventions. There, Art. II., relating to the manner of choosing a President, was ably defended by Hamilton, Iredell, Madison, and

Wilson. On the other hand, it was strongly opposed by Mason, Monroe, Luther Martin, and others. The weak points in the process of election were clearly shown. The fear of corruption among the electors was in good faith expressed. The confederate plan of election in the House was seized upon by many as a most convenient point of attack. Mason, of Virginia, thought "the House would be called on too often."¹ Such a method was declared by Monroe "to be opposed to republicanism."² The remarks of Grayson in the Virginia convention were significant. If 91 electors casting 182 votes, would distribute them among 5 persons in such a way that 4 received each 45 votes, while the fifth only 2 votes (he being the present incumbent), the duty of choosing an Executive would fall to the House, where it was possible the person with two votes could be chosen. Seven States with fifteen members could overcome six States with fifty members. The unfairness of the mode was shown more clearly by a comparison of the whole number of electors and representatives with the number of those voting for the successful candidate. It was proved that seventeen persons were able to control and defeat the choice of one hundred and thirty-nine persons.³ The same gentleman (Grayson) "would have a President for life, choosing his successor at the same time."

The objection of the extreme State-rights men to the jurisdiction of Congress over the time of choosing the electors and the day of their assembling, requires no comment. Luther Martin, of Maryland, declared that "there was a party who attempted to have the President appointed during good behavior, without any limitation as to time."⁴ The upholders of the new Constitution de-

¹ "Elliot," vol. iii., p. 493.

² *Id.*, 489.

³ *Id.*, p. 492.

⁴ "Elliot," vol. i., p. 377.

voted much time to recounting the difficulties the Convention was forced to meet. It is worthy of record that several distinguished men made their principal argument in favor of the Executive plan, from the standpoint of an election of electors by the people.

Randolph, of Virginia, declared with emphasis that the President was to be chosen "by the people at large."¹

In the North Carolina convention doubt was expressed as to the interpretation of the clause, declaring that the State shall appoint the electors. Iredell, being asked whether the duty would devolve upon the State legislature or the people, replied that "it could not be done with propriety by State legislatures."²

Much distrust had been shown by many who were fearful of the consequences resulting from any undue influence exerted upon the electors, or from intrigues among the electors. To an impartial mind, it would seem that no fair answer was given, calculated to remove entirely their apprehension. To argue that concert among the electors was impossible, because they would meet in different States on the same day, is not sufficient.

What would have prevented the electors from conferring in the interval between the time of appointment and day of voting? The language of the Constitution was almost repeated. The votes were to be sent sealed to Congress. Was the nation to be cursed with secret electoral bodies? Time alone would decide.

About this time, there appeared many articles in the newspapers of the day for and against the adoption of the Constitution. Among them, the admirable collection of papers entitled the *Federalist*, deservedly takes the first rank. For in them are found the matured opinions

¹ "Elliot," vol. iii., p. 486.

² "Elliot," vol. iv., p. 105.

of three distinguished statesmen. One of them, Alexander Hamilton, devotes one entire paper to the mode of electing a President. Moreover, several incidental allusions are made by him, as well as by Jay and Madison, in the other numbers of the series. Collecting their views upon this constitutional provision, we derive much valuable information in regard to the Constitution and functions of an electoral college. The electors were to be "enlightened and respectable citizens," possessing "extensive and accurate information relative to men and characters," and were to be "men most capable of analyzing the qualities adapted to the station" of a President. The electors were to investigate and deliberate; hence the argument of Baldwin and Pinckney in 1800,¹ and of the Hayes counsel before the Electoral Commission, that the colleges are "deliberative bodies."

It was predicted that the electors, exercising "discretion and discernment," would, in all probability, choose men "preëminent for ability and virtue."

A very important question now arises: By whom were the electors to be chosen? We read in the *Federalist* that the State legislatures were to choose the United States Senators, and the electoral colleges were to choose a President. The members, both of the colleges and the legislatures, were to be chosen by "the people of each State." Though we read in the forty-fourth number of the *Federalist*, written by Madison, that "without the intervention of the State legislature, the President of the United States cannot be elected at all. They must, in all cases, have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it. The

¹ "Annals of Cong.," 6th Cong., p. 28.

mode of appointment, it was said, "unites, in an eminent degree, all the advantages, the union of which was to be wished for." In the paper devoted to a summing up of the relative powers of the two Houses of Congress, we meet with the significant remark, that the power of choosing a President in case of a failure to elect, "as a means of influence, will be found to outweigh all the peculiar attributes of the Senate."

The important subject of duration in the presidential office was fully noticed in the seventieth and seventy-first numbers, to which the reader should refer. In the sixty-eighth number, we are told that the President "is to be elected for four years, and is to be reëligible as often as the people of the United States shall think him worthy of their confidence."

The pre-constitutional epoch has now closed. The independence proclaimed by the memorable state paper of 1776, and won after years of toil and sacrifice, was not enough. A government had been overthrown, but no government worthy of the name had been substituted in its place. The patriot beheld with sorrow and dismay the chaos of the Confederation, and almost lost confidence in the capacity of the people for self-government.

How a change was effected in the public mind has been already related. The Constitution was as necessary as the Declaration of Independence. They are, in fact, inseparable, and are the products of the brains of true and sterling patriots. The eulogy of Lord Chatham upon the Congress of 1776, so often quoted, may justly be applied to the signers of the Constitution. The pressure of a foreign yoke, which held the men of '76 in a bond of union, was not present in '87. In the latter year, State and sectional pride, combined with commercial jealousy

and financial disputes, had on several occasions almost caused the breaking up of the Convention.

Its changing course in regard to the tenure of the President is one of many instances. All honor to the men who subscribed their names to the Constitution, went home to their respective States, advocated it in the press and in the political arena, and in the last but decisive struggle in the State conventions, carried it through against the fiercest opposition. The earnest work and eloquent appeals of patriots seemed at first to be of no avail. The powerful States of Virginia, New York, and Massachusetts were controlled by the opponents of the proposed new government. The three Middle States of Delaware, Pennsylvania, and New Jersey had the great honor of first ratifying the Constitution in December, 1787. They were followed by Georgia and Connecticut in January, 1788, and on February 6th by Massachusetts. Great delay then ensued. Maryland waited till the 28th of April, South Carolina till May 23d, and New Hampshire till June 21st.

The two commonwealths of New York and Virginia still held back. The attention of the whole country was directed toward them. On the 25th of June, the convention of Virginia, by a vote of eighty-nine to seventy-nine, decided in favor of the new government. The same response was given on the 26th of July by New York. The proposed Constitution had now been judged by the American people to be a necessity. The sullen obstinacy of North Carolina and Rhode Island was disregarded, for such a contingency was anticipated by the Convention in the adoption of this clause: "The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same."

The Congress of the Confederation followed to the letter the directions of the Federal Convention. The electors were to be appointed by the States on the first Wednesday of January, 1789.¹ The day on which the electors should cast their votes was determined to be the first Wednesday of February. The proceedings under the Constitution were to begin on the first Wednesday of March. The first two dates are of no consequence, but the last one is of historical interest. The first Wednesday of March of that year occurred on the fourth day of the month. The presidential term is therefore considered to have begun on the 4th of March, 1789. This interpretation has been expressly adopted by Congress² and the United States Supreme Court.³

¹ "Elliot," vol. v., p. 541.

² "Annals of Cong.," 1st Cong., vol. ii., p. 1622.

³ *Owings v. Speed*, 5 Wheaton, 420.

CHAPTER IV.

THE FIRST PRESIDENTIAL ELECTION.

A NEW era now opened for the American people. Henceforth they were to live under a Constitution pronounced by England's greatest statesman to be "the most wonderful work ever struck off at a given time by the brain and purpose of man."¹

Participation in the choice of their political rulers was no novelty to the American people. In their local communities, counties and towns, the ballot had played an important part for many generations. But now was to be tried the experiment of the people of many commonwealths, scattered over a vast expanse of country, and with conflicting interests, engaged in a peaceful contest for the chief magistracy of a continent.

The close of the year 1788 found the American people engaged in the canvass preliminary to the first election of a President and Vice-President of the United States. The contest centred not in the presidency, but in the vice-presidency. For the mention of the name of Washington silenced all opposition, if any existed. With one voice, his countrymen called him to the first office in their gift. His feelings and sentiments are best described in his own words: "If I should conceive myself in a manner constrained to accept, I call Heaven to witness that this very act would be the greatest sacrifice of my personal feelings and wishes that ever I have been called upon to make.

¹ Gladstone.

It would be to forego repose and domestic enjoyment for trouble, perhaps for public obloquy ; for, I should consider myself as entering upon an unexplored field, enveloped on every side with clouds and darkness.”¹

Who was to be Vice-President? Many persons were thought of and proposed. By the Constitution, each elector was to vote for two persons, “of whom one, at least, shall not be an inhabitant of the same State with himself.” A custom, rigorous and inflexible as a law, was established from the beginning, adding another limitation to the elector’s power of choice. The holder of the second place must belong to a section of the country different from that of the holder of the first place.² No Southern man was mentioned outside his own State. The popular national sentiment leaned to John Adams, yet this gentleman was not favorably looked upon by the principal leaders of the Federal party, on account of his supposed feeling toward Washington, and of his Democratic tendencies. The necessity of union prevailed over personal antipathy. No one was a more available candidate than John Adams. This resolution, once formed, led to another consideration. How many votes would Adams be likely to receive? In the words of Hamilton, would Adams be “treading close upon the heels of the person we wish as President”?³

The strength of the opposition seemed to be concentrating in favor of George Clinton, then Governor of New York. The modes of nominating and choosing the electors will be considered together. It may be said, almost

¹ Washington to Benjamin Lincoln, Oct. 26, 1788. “The Writings of George Washington,” by Jared Sparks, vol. ix., p. 439, Boston, 1835.

² *Daily Advertiser*, January 6, 1789.

³ “Works of Alexander Hamilton,” edited by his son, John C. Hamilton, 1851 ; letter to Madison, Nov. 23, 1788, vol. i., p. 488.

with certainty, that the manner of appointing invariably controlled that of nominating. The district system counted among its advocates the ablest men in the country, and was adopted by Massachusetts and Virginia in 1789, and by North Carolina and Kentucky in 1792. The States of Pennsylvania, New Hampshire, and Maryland unfortunately gave their support to the general-ticket system.

A difference of opinion exists as to the motives which induced New Jersey, South Carolina, Connecticut, Georgia, and Delaware to choose electors by the legislature. The better opinion seems to be, that, with the possible exception of South Carolina,¹ the people of these States would have been intrusted with the power, if the legislatures could have been convened in time to pass a law.

One of the defects of the Constitution was seen in the case of New York. The upper house was controlled by Federals; the lower by Anti-Federals. As the time between the meeting of the legislature, December 11th, and the appointment of the electors was so short, it was acknowledged by all that a popular election could not be held. Another mode must therefore be found. The Senate refused to go into joint ballot; the Assembly would not compromise by dividing the electoral votes. The Senate passed a bill on December 18th, in such a form that four electors would practically be chosen by itself. On December 22d, the bill by a vote of 33 to 21 was rejected in the Assembly. The result was the failure to pass an electoral law and therefore the State was deprived of its rightful influence in the nation.

¹ See page 167 for the cause of the retention of the legislative plan by South Carolina down to 1861.

In this connection it may be proper to refer to the answer of the Senate to the speech of Governor Clinton, in which we find the following language :

“If in your Excellency’s opinion the public business had admitted thereof, we trust you would have called us together at an earlier period, as we consider the appointment of electors to supply the high confidential trusts of President and Vice-President of the United States, the manner of which is not expressly defined but left to the discretion of the respective legislatures, to be of such magnitude, that if sufficient time had intervened for a general election, we should on our part have referred it to the suffrages of the people at large, with the utmost satisfaction.”

The governor replied that it was impracticable at that time, yet for forty years that power was withheld from the people.

The faint beginnings of a regularly organized State convention, convened for the purpose of nominating a State electoral ticket, were witnessed in the general-ticket States. Largely attended meetings were held in their capitals, composed of members of the legislature and other prominent citizens. Tickets bearing the names of electors were placed in the field, thus showing the unbounded facility which exists for the concentration of political power in the hands of a few men.

In Pennsylvania the Federalists were congratulated upon the unanimity of their conference at Lancaster. It was declared that one full electoral ticket containing ten names would unite the voices of all friends of the government ; and that no ticket could more completely embrace the various interests of the State. The hope was therefore expressed that it would be run by all good men.¹ The

¹ *Penn. Packet*, Nov. 10, 1788.

opposition also held a convention at Lancaster. At one time it was rumored that Patrick Henry was to be supported for the presidency and Clinton for the vice-presidency, by the Anti-Federalists; the "friends of the Constitution" were called upon to be active in choosing electors only who would undoubtedly elect the man of the people.¹ An electoral ticket was nominated at a largely attended meeting of Federalists at Annapolis, Maryland, and a circular letter was also sent to the various counties of the State.² The fight in Maryland was bitterly waged; none harder was ever fought in American politics. The Federalists carried the day by an average vote of five thousand six hundred to the opposition vote of two thousand two hundred.³ The same party, it may be of interest to know, obtained four hundred and seventy-nine votes in Baltimore, and the opposition three hundred and fifty-two.

The same unity and consistency of action marked the course of the political leaders in the States where an election by the legislature prevailed. Far different was the result in Massachusetts, nearly two hundred persons were self-nominated candidates in the various districts. Few votes were polled, as was also the case in a remarkable degree in New Hampshire. The most warmly contested struggle was witnessed in the Virginia electoral districts. The Federals carried nine out of twelve districts. The Anti-Federals gave their votes to Washington and Clinton.

The theoretical excellence of the Constitution was tested with unfavorable results during the balloting for President in the electoral colleges on the first Wednesday of February, 1789. The Federal electors, from fear of Adams equalling Washington, scattered their votes. Massachu-

¹ *The Maryland Journal and Baltimore Advertiser*, Dec. 19, 1788.

² *Id.*, Dec. 26, 1788.

³ *Id.*, Jan. 23, 1789.

setts and New Hampshire alone gave Adams a united and hearty support. The action of these electors was denounced by Adams as "ominous of imperfect faith."

The slight interest taken in the efforts to found a national government, can be judged from the inability of the Senate to organize, on account of the lack of a quorum. On the 4th of March, only eight Senators had arrived in New York, then the temporary seat of government. New Hampshire, Connecticut, and Pennsylvania were alone fully represented, while one Senator appeared for Massachusetts and one for Georgia. On this day a circular was addressed to the absent members, urging upon them "the indispensable necessity of putting the government into immediate operation." Continual adjournments were resorted to, and no Senators arrived during the following two weeks. A second circular, most supplicating in its tone, was sent, beseeching them not to allow "the public expectations to be disappointed." At length a quorum was obtained on Monday, April 6th, when twelve Senators were present. The first and most important business transacted was the election of John Langdon as President, *pro tem.* of the Senate, "for the sole purpose of opening the certificates and counting the votes of the electors of the several States, in the choice of a President and Vice-President of the United States.¹ The Senate having thus closely followed the directions of the Federal Convention, informed the House of Representatives that a President *pro tem.* had been appointed for the purpose above mentioned, and that the Senate was "now ready, in the Senate-chamber, to proceed, in the presence of the House, to discharge that duty." The resolution of the Senate, while apparently strengthening the claim of the President's right to count the votes, has given rise to

¹ "Annals of Cong.," 1st Cong., vol. i., p. 16.

a theory which was advocated by a Southern Senator during the Wisconsin dispute of 1857.¹ The Senate was to regulate the manner of counting the votes, the President was to count the votes by order of the Senate, representing the States. The House of Representatives was to be present merely for the prevention of secret intrigues. Three tellers were appointed "to make a list of the votes, as they shall be declared." The custom of appointing three tellers, one to represent the Senate, two to represent the House, dates from this year, 1789. The counting, whether done in a ministerial manner by the President or the tellers, was witnessed by the two Houses in the Senate-chamber. The result as announced was satisfactory to all. No objections were raised. No debate took place. A messenger was appointed to deliver to the President-elect, a certificate, which will serve as a specimen of the form of notification employed subsequently.

"Be it known that the Senate and House of Representatives of the United States of America, being convened in the City and State of New York, the sixth day of April, 1789, the underwritten, appointed President of the Senate for the sole purpose of receiving, opening, and counting the votes of the electors, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for a President and for a Vice-President, by which it appears that George Washington, Esquire, was unanimously elected, agreeably to the Constitution, to the office of President of the United States of America.

"In testimony whereof, I have hereunto set my hand and seal.

JOHN LANGDON."²

¹ See *Congressional Globe*, 34th Cong., 3d sess., pp. 662, 668. Senator Thompson, of Kentucky.

² "Counting Electoral Votes," published by order of House of Representatives, Dec. 23, 1876, p. 8.

This mode of notification long ago fell into disuse. It was not employed in 1792 was sent only to the Vice-President in 1796, and until 1825 was employed with varying regularity. Since that year we find no record of the sending of a similar certificate to the President- or Vice-President-elect.

On the 14th of April, 1789, Washington, in his retirement at Mount Vernon, received from a messenger the above-mentioned certificate. He lost no time in hastening to New York. At every place he passed through, the love and gratitude of the people were abundantly manifested. Triumphal arches, cavalcades of soldiery, the booming of cannon, the ever-recurring address of welcome, inspired the heart of Washington with mingled feelings of joy and sadness. His peaceful march through the Jerseys ended at Elizabethtown Point, where a Committee of Congress awaited him with a magnificent barge especially prepared for the occasion. On the 23d of April Washington landed at Murray's Wharf, where he was met by Gov. Clinton with the military and an immense concourse of people. The day was one continued levee and feasting. The illumination in the evening marked the strength of the popular feeling.¹

The inauguration of the President-elect did not, however, take place until a week later. The cause of the delay was the disagreement of the two Houses as to the form of title to be addressed to the President. A joint committee reported that "it is not proper to annex any style or title" in addition to those "expressed in the Constitution." The Senate rejected the report and appointed a second committee, which gave its opinion that "it will be proper" to address the President as "his

¹ Irving's "Life of Washington," vol. iv., pp. 505 to 512.

Highness, the President of the United States, and Protector of their Liberties.' The refusal of the House to confer a second time caused the subject of titles to be laid aside.

John Adams had previously taken his oath of office on the 21st day of April. The 30th day of April was finally set apart for the swearing in of the President. The ceremony took place with all the grandeur of early American simplicity in Federal Hall in Wall Street. The oath of office was administered by Chancellor Livingston, and was taken in the presence of an immense multitude, who filled Wall Street to Broadway. The open-air ceremony closed with the shouts of the people, who rent the air with their cheers, at the mention of those ever-living words of Livingston—"Long live George Washington, President of the United States." The inaugural address was delivered in the Senate-chamber, in the presence of both Houses, and was responded to with sentiments that breathed the popular feeling. In commemoration of this great national event a statue has lately been erected on the spot, on the steps of the sub-treasury.

CHAPTER V.

WASHINGTON'S ADMINISTRATION.—ACT OF 1792.

THE cabinet of Washington was not selected till September, 1789. Its composition displayed the character and mind of Washington, Hamilton and Jefferson, Knox and Randolph. Fairness and impartiality marked his conduct in that trying time. He endeavored to take the people of the whole country in his confidence. The wisdom of his action in bringing discordant elements into his council must be admitted, in view of the circumstances of the country and his own commanding position.

The first four years of Washington's administration were years of enduring legislation. The American people advanced many steps in the march to national unity and greatness. During that period laws were enacted relating to the executive and judicial branches of the government; a cabinet was constructed, a system of tariff laws was devised. The revolutionary debt—national, state, and foreign—was provided for in funding bills; a national bank was chartered for twenty years; and the location of the national capital was selected. Of all this important legislation we will here concern ourselves solely with the steps taken to carry out the Constitution in regard to the choosing of a President and the regulation of the succession in the appropriate cases.

In the early part of the third session of the first Congress,¹ a committee was appointed by the House of

¹ April 30, 1790.

Representatives to draft a bill in accordance with the clause relating to the choosing of a President, and the filling of vacancies in the offices of President and Vice-President. The report of this committee provoked much discussion. In regard to who should succeed, a variety of views was expressed. To those desiring the Secretary of State, it was objected that the President could thereby name a successor. Those who thought the Chief-Justice a suitable person, were answered that the Chief-Justice presides at an impeachment trial. The proposition to make the President *pro tem.* of the Senate a successor, was opposed on the ground that he was not a permanent officer. Some suggested the Speaker of the House. It was, however, seen that no agreement could be reached.

On the very important matter of fixing the time of choosing the electors, much dissatisfaction was expressed with the action of the committee. A certain specified day had been set apart, and would, if observed, have caused much inconvenience to those States which chose electors by the legislature. At this point, sprang up a debate upon the meaning of the Constitution. The chief argument against the report was, that in some States two sessions of the legislature would be necessary. Jackson, of Georgia, made an earnest appeal in favor of striking out every thing relating to the time of choosing electors. Two prominent members, Carroll and Giles, while arguing in favor of uniformity, declared their firm conviction that the power of choosing electors was vested exclusively in the people of each State. The advocates of the State-rights doctrine carried the day, and the House concurred indirectly in the opinion that a legislature can constitutionally appoint the electors. Nothing definite was accomplished in the House, as was also the case in

the Senate, and the matter was postponed till the next session.

In the first session of the second Congress,¹ the Senate appointed a committee of three, Rutherford, Sherman and Burr, "to report a bill determining the time of choosing the electors of President and Vice-President, and the day on which they shall give their votes, and prescribing the mode of transmitting the votes to the seat of government."

On November 15th, a bill was drawn up, which, after undergoing some modifications, received the assent of the Senate on the 30th of November, 1791. The bill was sent to the House on December 2d. In it, it was provided that the executive of each State should perform a certain duty. The State-rights men expressed great indignation. Niles of Vermont, and Hillhouse of Connecticut, made strong objections. The performance of the duty, they said, would be degrading. The objection was not sustained. The technical objection was raised against the president *pro tem.* and the Speaker of the House, on the ground that they were not officers within the meaning of the Constitution.

Whether influenced by this reasoning or not, the House substituted the Secretary of State. The Senate refused to agree to the amendment; the House receded, and the bill became a law on March 1, 1792. The Constitution was now carried into effect. By this act of 1792, electors were to be appointed within thirty-four days preceding the first Wednesday in December in every fourth year succeeding the last election. This regulation was altered by the law of January 23, 1845, which established a uniform time for the election of electors—namely, the Tuesday

¹ November 1, 1791.

next after the first Monday in the month of November of a presidential year. Three lists of the names of the electors were to be made, certified and delivered by the executive authority of each State to the electors on or before the day of election. This day was determined to be the first Wednesday in December¹ of a presidential year, on which day the electors are to assemble, and give their votes. After the balloting is finished, the electors are required to make and sign three certificates of all the votes cast by them. Then the certificates are to be sealed, the electors certifying that a list of votes is contained therein. To each list must be annexed one of the executive lists, which contains the names of the regularly appointed electors. The three electoral certificates are to be disposed of in the following way: A messenger appointed by a majority of the electors is to proceed to the seat of government, and deliver to the President of the Senate, before the first Wednesday in January, one of the certificates. A second one is to be sent through the mail to the same person, at the same place. To the Federal judge of the district in which the electors meet, must be delivered the third certificate. This last direction is intended to provide for the contingency of the non-reception of a certificate at the capital, in the time required.

The certificates are to be opened, and the votes counted on the second Wednesday in February, succeeding the meeting of the electors, on which day Congress must be in session, for the purpose of ascertaining and declaring, agreeably to the Constitution, the persons entitled to hold the offices of President and Vice-President.

In the case of a vacancy in the offices of the President and Vice-President, the President *pro tem.* of the Senate

¹ Changed to second Monday in January. See p. 274.

and the Speaker of the House succeed in the order named. A new election was to be held to fill the vacancy, if an interval of two months intervened between the "date of notification" and the first Wednesday in December, but in every case, electors must be appointed the following year within the time prescribed for the regular election. The legislation of the forty-ninth Congress has made many important amendments to this act.¹

¹ The original act of March, 1792, is found in the "Annals of Congress" second Congress, p. 1342.

CHAPTER VI.

THE SECOND PRESIDENTIAL ELECTION.

THE second presidential election occurred in November, 1792. Who was to be the next President? No one of the party leaders of that day could have governed the country successfully as President, and no party existed strong enough and national enough to make a President. The trials of Washington had been many. He longed for the peaceful pleasures of his rural home, but that he should be re-elected was the opinion of all, even of the most extreme Republicans. The earnest wishes of his friends and the dangers of the country persuaded him to assume once more the burdens of government. This determination on the part of Washington, of course made the election a struggle for the vice-presidency.

The contest really lay between Adams and Clinton. Jefferson was not a candidate, as the Virginian electors were forbidden by the Constitution to vote for two Virginians.

Adams and Clinton were typical candidates. Party managers, even at this early day, made up the "slate" of electors. In Massachusetts, voters were urged to support a list of electors which had been formed upon "mature judgment and for the purpose of concentrating the suffrages."¹

A meeting of citizens at Philadelphia² appointed certain persons, called "conferrees," to serve in a general con-

¹ *Columbian Centinel*, Oct. 31, 1792.

² *Aurora*, July 27, 1792.

ference at Lancaster, held by them and others from the several counties in the State, for the purpose of nominating a full ticket of electors of President. The conference was held, and proposed a ticket favorable to Clinton. The Federalist Convention, convened at the same place, made up a list pledged to Adams. No interest was taken in the election by the people at large. The vice-presidency was alone at stake. The newspapers of that time are almost a blank on the subject. An occasional article, criticising the views of Adams on society and government, appeared. In Freneau's *Gazette*, an able exposition of the radical differences of the two parties is presented by a master-hand.¹ Freneau had lately established a journal in advocacy of the views of Jefferson and Madison.

In Pennsylvania, only 4,000 votes were polled, while nearly 35,000 were cast, in the month before, for Congressmen. The same may be said of Maryland. After the election, a correspondent of the *New York Journal and Patriotic Register*, while speaking of the importance of the presidential election, made the following comment: "The choice of an intermediate body appeared to remove from their attention the ultimate and important result of the election."² Even after the appointments of the electors, many appeals were made in the press in favor of Clinton and Adams, thus showing that the idea of a pledged automatic elector had not been fully developed.¹ Yet the result of the election showed the strength of party ties. The five New England States presented a solid, unbroken array on the side of the Federalists. Also the States of New Jersey, Delaware, and Maryland. Adams received twenty-one out of twenty-three votes from South Carolina and Pennsylvania. The Anti-Federal

¹Madison, Sept. 26, 1792.

²Nov. 14, 1792.

party disclosed its power in New York, Virginia, North Carolina, and Georgia, whose electors cast forty-nine ballots for Clinton.¹ A feeling of independence was for a time manifested in the North Carolina College. The members deliberated and finally decided to support Clinton, on the ground of Adams' opposition to an apportionment bill in the United States Senate.

A case occurred in this election, which shows that the governor's certificate ought not to be deemed conclusive or necessary. On the 8th of November, 1792, Governor Hancock sent to the legislature of Massachusetts a message which speaks for itself.²

“By the Constitution of the United States of America, each State is to appoint, in such manner as the legislature shall direct, electors of President and Vice-President. By a late act of Congress it is enacted that the supreme executive of each State *shall* cause three lists of the names of electors of such State to be made and certified, and to be delivered to the electors on or before the first Wednesday in December. I feel the importance of giving every constitutional support to the general government; and I also am convinced that the existence and well-being of that government depend upon preventing a confusion of the authority of it with that of the States separately. But that government applies itself to the people of the United States in their natural, individual capacity, and cannot exert any force upon, or by any means control, the officers of the State governments as such; therefore, when an act of Congress uses compulsory words with regard to any act to be done by the supreme executive of this commonwealth, I shall not feel myself obliged to obey them, because I am not,

¹ No change was made in the mode of choosing electors. See p. 34. Vermont and Rhode Island also chose by legislature; Kentucky and North Carolina by districts.

² *Columbian Centinel*, Nov. 10, 1792.

in my official capacity, amenable to that government. My duty as governor will most certainly oblige me to see that proper and efficient certificates are made of the appointment of electors of President and Vice-President, and perhaps the mode suggested in the act above mentioned may be found to be the most proper. If you, gentlemen, have any mode to propose with respect to the conduct of this business, I shall pay every attention to it. Gentlemen, I do not address you at this time from a disposition to regard the proceedings of the general government with a jealous eye, nor do I suppose that Congress could intend that clause in their act as a compulsory provision ; but I wish to prevent any measure to proceed through inattention which may be drawn into precedent hereafter to the injury of the people, or give a constructive power where the Federal Constitution has not expressly given it.”¹

The message had the desired effect upon the legislature, for a bill was passed on November 16, 1792, embodying substantially the objectionable provision of the congressional act.

The preamble to the bill read as follows :

“Whereas, by a resolve passed on the 30th day of June last, for districting the commonwealth for the purpose of choosing electors of President and Vice-President, no provision is made for certifying to the government of the United States the choice of such electors or their doings as such.”

In regard to the manner of proceeding during the

¹ The following criticism appeared in the *Columbian Centinel* : “The obligation emanates from the Constitution of the United States, and operates upon him in his official capacity. As an individual, it is not his duty to make out or attest the certificates, but it is his duty as the first executive officer of the State. Unless he does this, it will be undone. The national government cannot be organized, and the oath he has taken to support that government will be violated.”

counting of the votes in 1793, certain rules and regulations were adopted in the second session of the same Congress that passed the law of 1792, and have not been essentially changed by subsequent Congresses. Certain additions and amendments, however, have been made to meet temporary exigencies.

On February 11, 1793, a joint committee appointed "to ascertain and report a mode of examining the votes for President and Vice-President," etc., made the following report:¹

"That the two Houses shall assemble in the Senate-chamber on Wednesday next at twelve o'clock.

"That — persons be appointed tellers on the part of —, to make a list of the votes as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, and the persons elected, to both Houses assembled as aforesaid, which shall be deemed a declaration of the persons elected President and Vice-President, and, together with a list of the votes, be entered on the Journals of the two Houses."

In the "Annals of Congress" for Wednesday, February 13, 1793, we read that the Senate informed the House, "that a President of the Senate is elected for the sole purpose of opening the certificates and counting the votes."² This statement is certainly inaccurate, for Vice-President John Adams presided at the joint meeting. What did actually occur at the meeting is best described in the words of the same "Annals" for the same day:

"The two Houses having accordingly assembled, the certificates of the electors . . . were, by the Vice-President,

¹ "Annals of Cong.," 2d Cong., p. 644.

² "Annals of Cong.," 2d Cong., pp. 874, 875.

opened, read, and delivered to the tellers appointed for the purpose, who, having examined and ascertained the votes, presented a list of them to the Vice-President, which list was read to the two Houses."

On the day following, a joint committee was appointed "to wait on the President and notify him of his unanimous re-election."

On the 4th of March, 1793, Washington was inaugurated President of the United States, in the Senate-chamber at Philadelphia.

CHAPTER VII.

WASHINGTON'S ADMINISTRATION CONTINUED.—THIRD TERM.—THIRD PRESIDENTIAL ELECTION.

WASHINGTON entered upon his second term under most unfavorable circumstances. France, our old ally, was the centre of the world's gaze. Centuries of oppression had there developed the wildest passions of the human race. Every vestige of the olden time had been swept away. Church, royalty, and aristocracy were alike banished. The voluntary flight of the "nobles," the massacres of the clergy, and the land confiscations, followed by the beheading of Louis XVI., had enkindled a general European war. The sympathies of the American people were naturally on the side of France, for the memories of La Fayette and Rochambeau had not yet faded. But was sympathy duty? That question Washington was compelled to answer, when citizen Genet landed on our shores, and the answer was the neutrality proclamation of April 22, 1793, wherein he says that "the duty and interests of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial toward the belligerent powers."¹ The principles here enunciated have been the rule of conduct of the United States in foreign conflicts. The internal affairs of the nation were far from satisfactory. The discordant elements of the first cabinet, long kept in outward subjection, were now openly seen.

¹ "Statesman's Manual," vol. i., p. 46.

Jefferson left the cabinet on December 31, 1793, and Hamilton on January 31, 1795.

The Whiskey Insurrection "and the Jay Treaty with England" were the leading events in his second term, and as it drew to a close, he declared his unalterable purpose to retire forever from public life.

His farewell address breathes the purest patriotism and is the summation of political wisdom for the guidance of future generations. In relation to a third term, he said :¹

"I rejoice that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiments of duty or propriety ; and am persuaded, whatever partiality may be retained for my services, that in the present circumstances of our country, you will not disapprove of my determination.

"Satisfied that, if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe that while choice and prudence invite me to quit the political scene, patriotism does not forbid it."

The reasons assigned by Washington apparently sustain the claim of the third-term advocates of 1880, that dictates of health and ease, rather than of principle, controlled his action.

Cobbett² said it was an open question whether certain

¹ September 17, 1796. "Statesman's Manual," vol. i., p. 69.

² "Works of Peter Porcupine," London edition, 1801, vol. iv., p. 443.

William Cobbett was an English political writer, who visited the United States in 1794 and remained till 1800. From his return to England till his death in 1833, he was engaged in a ceaseless agitation for the amelioration of the people in their political, social, and religious rights.

His "Paper against Gold," his "Two-penny Trash," and numerous other works have made him famous. In 1810, he was imprisoned for a year for libel ; in 1817, threatened political prosecution drove him to America. In 1831, the government was unsuccessful in its trial of him on the charge of exciting the agricultural laborers of England to acts of violence.

publications which appeared in the press during the fall of 1796, "did not form one of the strongest reasons for his declining to serve as President a third time." An editorial article in the *Aurora*, December 21, 1796, had the following criticism :

"The President seems to arrogate great merit to himself, on account of his disinterestedness, and, in this, he no doubt includes his declination to serve again. The disinterestedness on this latter score is rather questionable ; for his unwillingness to be a candidate seems to have arisen rather from a consciousness that he would not be re-elected, than a want of ambition or lust of power."

Cobbett boldly says : " The true cause was ' the loss of popularity,' and the further loss from the apprehended war with France." Far different is the statement of Marshall, in his life of Washington :

"In districts where the opposition to his administration was most powerful, where all his measures were most boldly condemned, where those who approved of his system possessed least influence, the men who appeared to control public opinion on every other subject, found themselves unable to move it on this.

"The determination of his fellow-citizens had been unequivocally manifested, and it was believed to be apparent, that the election would again be unanimous, when he announced his resolution to withdraw from the honors and the toils of office."

According to John Adams, Washington's retirement was "his voluntary choice."

Washington's farewell address was a signal for the first contested presidential election. The stirring and astounding events in the Old World had introduced many

new and complicated questions into our politics at that time. There was now no mincing of matters. The fury of party passion was now let loose. Each party contained leaders of historic fame. The Federal party, professing to carry out the policy of Washington, counted among its advocates Hamilton, Adams, Jay, Griswold, Sedgwick, Pinckney, and Ames. In the ranks of the Republicans were enrolled statesmen no less patriotic—Jefferson, Madison, Gallatin, Samuel Adams, and Livingston. By common consent, John Adams and Thomas Pinckney were to be fairly and honestly supported for the presidential office by the Federalists throughout the entire country. The Republicans, on the contrary, supported as their standard-bearer Thomas Jefferson, and him alone.

Adams was called an aristocrat, a monarchist ; Jefferson an infidel, a disorganizer of government. Personalities entered largely into the canvass. Sectional feelings also played a prominent part. The spirit of the Constitution was seen struggling with the growing demands of party. The complete prostration of the system, in the transformation of the ideal elector into a mere instrument to record the will of those who chose him, is foreshadowed in the appeal of "Sydney" through the columns of the *Aurora* :

"The President must not be merely the creature of a spirit of accommodation or intrigue among the electors. The electors should be the faithful agents of the people in this important business ; act in their behalf as the people would act were the President and Vice-President elected immediately by them ; and to this end the people must make up individually their own minds upon the merits of the two candidates.

"The electors must become acquainted with the sentiments of their constituents, and the people come to a knowledge of the

opinions of the electoral candidates, that in exercising the important right of voting, they do not place their confidence in one who shall, in the only act required of him, give his vote in opposition to their views and interests. Let the people then choose their electors with a view to the ultimate choice."

The organizers of the campaign could not afford to allow any elector to be chosen without a pledge. The presidency would, in their opinion, become merely the subject of chance. The safest way of securing certainty was the nomination of a pledged list of electors. The election of this list was another necessary step. Both these objects were accomplished with comparative ease in the States that chose electors by general ticket or by the legislature. A single independent elector, unsupported by an organized party in every section of the State, would, at the utmost, poll only a local vote ; but the appearance in the field of unpledged candidates was very different in the district States ; for that local vote might possibly secure the election of one elector.

In the State of Pennsylvania, the modern practice of holding conventions to nominate a full ticket of electors was then in partial operation. The Republican meeting contained several Congressmen, many members of the State legislature, and citizens from various parts of the State. Electors were nominated, and hand-bills were circulated, informing the voters that these electors would vote for Mr. Jefferson. This method was substantially followed by the Federalists. Among the persons who were candidates for the electoral college in Georgia were some gentlemen holding State offices.

The governor issued a proclamation declaring that these persons were ineligible. This same question came before the Electoral Commission.¹

¹ See p. 226.

The governors of Massachusetts and New Hampshire were candidates for the office of elector. Though nothing was said as to their ineligibility, much unfavorable comment was occasioned. In some Virginian districts, several gentlemen announced to the people the political principles which they held, but refused to declare for whom they would vote if chosen electors. "Public opinion" was to have its due weight. In one of the letters, we perceive the gradual development of the system: "Although I am determined, should I be your representative, not finally to decide on the characters for whom I shall vote until the meeting of the electors, yet I am free to declare that if I retain my present impressions, I shall vote for Patrick Henry and John Adams"; but his mind was to "be open to conviction."

During the month of November many rumors were circulated concerning the validity of elections in certain States. In fact, no election save that of 1876, was more fruitful of disputed questions. Some newspapers of the day said that the Vermont election had been conducted under the old law of 1792, which had expired; others, that the electoral bill had not been presented to the governor. At all events, it was first thought that the Vermont votes would be rejected. Unfortunately, in this as in many other disputed points, we are left to conjecture. The cause of the Vermont trouble is wrapped in mystery. An examination of the journals of the Assembly and Council of Vermont for the years 1792, 1796, and 1800, would lead us to believe that the election of 1796 was valid.¹

¹ "Records of the Governor and Council of the State of Vermont," vol. iv., pp. 35, 119, 278. Printed at Montpelier. J. & J. M. Poland. 1876. We read, however, that on Nov. 1, 1791, committees were appointed to report a bill for choosing electors. The writer has been unable to find the report.

The Assembly, in 1796, passed a resolution, requesting the Council and Governor to join in choosing the electors. From the minutes of the Council, we learn that the resolution was concurred in, and on the 4th of November, in the language of the journal: "The Governor and Council then proceeded to the House to join in Grand Committee for the purpose of choosing electors, etc., and when the ballots of both Houses were duly taken, the following gentlemen appeared to be elected by a majority of votes."¹

The same method of proceeding was employed in 1792 and in 1800, and no objections were raised. The difficulty may have arisen from the peculiar structure of the Vermont government. The governor and twelve men, called councillors, formed the upper house. Madison informed Jefferson, on December 25th, that Adams would be the next President, "unless the Vermont election should contain some fatal vice in it."² The patriotism of the latter at this time is well illustrated in his letter to Mr. Madison :

"I observe doubts are still expressed as to the validity of the Vermont election. Surely, in so great a case, substance and not form should prevail. I cannot suppose that the Vermont constitution has been strict in requiring particular forms of expressing the legislative will. As far as my disclaimer may have any effect, I pray you to declare it on every occasion, foreseen or not foreseen by me, in favor of the choice of the people substantially expressed, and to prevent the phenomenon of a pseudo-president at so early a day."³

The Georgia election furnished an occasion for the fol-

¹ *Id.*, p. 119.

² "Letters and Other Writings of James Madison." Published by order of Congress. Phila.: J. B. Lippincott & Co. 1867.

³ "Jefferson's Life," by Randolph, vol. iii., p. 346.

lowing comment in the *Boston Mercury* of November 29, 1796 :

“We understand from the Georgia papers that there is likely to be no valid choice of electors in that State, the legislature having made no legal provisions for that purpose, the two houses having only passed a resolution prescribing the mode, which by the constitution of Georgia is not a legislative act without the sanction of the governor. . . . In this case, the manner of appointing electors has not been directed by a legislative act within the constitution of Georgia, and therefore the electors, if any should be appointed, will not be legal electors within the Constitution of the United States.”

The dispute in Pennsylvania over the conduct of certain local inspectors of election resembled the deplorable scenes of 1876 in Florida and Louisiana. The electors had been chosen by general ticket, and the State law required the county canvassers to return the votes to the office of the Secretary of State within fourteen days after the election. At the expiration of this period, the returns received at the State capital gave Adams a majority of 980 votes over Jefferson.

Returns from three counties were missing. What was to be done? Were the fifteen electoral votes of Pennsylvania to be cast for John Adams, contrary to the will of the people? No, was the answer of Governor Mifflin. Form must yield to substance. Assuming this responsibility, he refused to issue a proclamation of the result of the election till the latest possible moment. Abuse was heaped upon him from the Federal ranks. Uriah Tracy, a leading Federalist politician, thus wrote to Wolcott¹:

¹“Memoirs of Administrations of Washington and Adams,” by George Gibbs, vol. i., p. 407.

“Governor Mifflin has acted a most extraordinary part by postponing his proclamation of election in Pennsylvania, by which step it is probable all, or all but one or two, will vote for Mr. Jefferson.” The governor was not to be intimidated. Precedent, moreover, was in his favor. A similar case had arisen in 1792, wherein the opinion of the Supreme Court and Attorney-General of Pennsylvania was then sought and obtained. The decision was rendered on the 19th of November, 1792, in these words :

“We are of opinion that the governor, under all the circumstances of this case, should postpone any decision of this election of electors until the morning of Wednesday, the 21st inst., when, we think, he will be legally authorized, and it will be proper for him, to ascertain from the returns which shall then be actually received, the fifteen persons who have the highest number of votes, and to proclaim and notify those persons, and insert their names in the lists directed by the act of Congress, as the electors duly chosen and elected.”¹

The following questions were propounded to the Court :

“Whether the lists required to be delivered by the Act of Congress should certify such persons to be the electors duly chosen.”

“Whether the governor is empowered and required by the law to enumerate and ascertain the number of votes from the returns now actually received.”

“How are returns hereafter received to be considered and disposed of.”

These questions, with the above opinion, were transmitted to the Supreme Court for further discussion. The following is the opinion of the Court :

“We have considered and compared the two acts of Assem-

¹ *Amer. Dai. Adv.*, Phil., Nov. 19, 1796.

bly respecting the election of electors of President and Vice-President of the United States. The act of 1792 directs the sheriffs of the several counties to transmit to the governor returns of the election within twelve days after the election. By the law of the 1st of April, 1796, the prothonotary of the proper county is directed to transmit to the governor a return of the election, so as the same may be delivered within fourteen days after the election.

“We are of opinion that no variance exists between these acts that can lead to a change of sentiment, and that applying the same principle in the present case, the governor should postpone any decision on the election of electors until the morning of the last Wednesday of the month in the year 1792, being the 28th, and in the present year the 30th of the month of November.”¹

The character of the later returns displayed the wisdom of delay. The first returns from Lancaster County did not give William Brown, a Jefferson elector, a single vote. After considerable correspondence and threats, the county officials transmitted an acknowledgment that the elector had received 618 votes. The Bucks County returns all read John Edgar instead of James Edgar.

On the 24th of November Governor Mifflin proclaimed the result, with the statement that the returns from Green County were still missing. The best defence of the governor's action is found in his speech delivered in the presence of the two houses of the legislature, December 9, 1796.

After speaking of the holding back of informal returns, and of the sending of returns by mail to Pittsburgh instead of to Philadelphia, he says :

“But, upon the whole, you, gentlemen,—every candid citizen,—will agree, conformably to the opinion and advice upon

¹ *Aurora*, Nov. 21, 1796.

which I have acted, that no force, fraud, or accident should be allowed to divert or defeat the regular operations of the public choice, and that whenever the real sense of the people can be authenticated, the remissness, the mistakes, the malversations of officers, who are appointed merely to preserve form and order in transacting the business of elections, cannot be sufficient to preclude investigation in contradiction to evidence and reason, nor to establish error at the expense of truth and justice."

He admitted, however, that the law had not provided for the specific case, and therefore fell back on his duty as governor.

He then had the pleasure of announcing the news of the election of thirteen Republican and two Federalist electors. Yet dissatisfaction was expressed in Republican circles. Why should two Federalists be returned elected? Some said that one Republican elector was ineligible; that another one's name was spelled incorrectly. Again it was claimed that the holding back of the Green County returns was the real cause of the non-election of the two Republican electors.

The *New York Diary*, in speaking of the letter and spirit of the law, said:

"From these circumstances it is believed that Jonas Hartzell and James Edgar will be ultimately entitled to vote as electors."

This important statement was made in the leading opposition journal: that "it may probably be made a question, in proper time and place, whether the voice of the people ought to be frustrated, owing to trifles and informalities, by the rejection of the votes of those two persons."¹

¹ *Aurora*, Dec. 12, 1796.

It was further rumored that the votes of the excluded persons were to be taken and returned with a special statement to Congress.¹

On Wednesday, the 7th of December, the Pennsylvania electors convened at Harrisburgh. Bells were rung; the electors moved in procession to the court-house, and there, in the presence of several hundred citizens, organized the college. The fifteen persons named in the governor's proclamation presented their credentials and took their seats.

Now was witnessed a scene. The two excluded Jefferson electors appeared and claimed the right to vote. They also produced documentary evidence showing that they had been chosen by a majority of the voters of the State. Their protest was disregarded.² The closeness of the popular vote may be seen in the returns canvassed. The Republican ticket received 12,300 votes, while the Federalist received 12,100 on an average.

The election was now proceeding. The State legislatures had made, with two exceptions, no changes in the laws of 1792, in the mode of choosing electors. Maryland adopted, and continued for many years afterward, the district system. Georgia chose her electors by the general-ticket system. The manner selected by the State of Tennessee, just then admitted to the Union, deserves more than a passing notice. On August 8, 1796, the legislature divided the State into three districts by an act which read as follows :

"That the said electors may be elected with as little trouble to the citizens as possible, be it enacted that . . . are

¹ "Memoirs of the Administrations of Washington and Adams," by George Gibbs, vol. i., p. 400. Wolcott, Jr., to Wolcott, Sr.

² *Aurora*, Dec., 1796.

appointed electors to elect an elector for their respective districts.”¹

The same law was re-enacted in 1800. The primary elections had now been held, and all disputes quieted.

Another stage in the process of election was yet to come. No one knew who was to be the next President. The Adet note was sprung upon the country to influence the action of the electors by threats, if not by appeals to their love of France. As is well known, the note had not the effect expected. The attempt in a republic to separate the government from the people will ever fail. The work of the practical men in both parties now began. A President must be made. The Republican leaders were united in their support of Jefferson, but the same cannot be said of the Federalist party.

The latter was composed of men who held different views of government and society even among themselves. It may be said with certainty that an internal strife raged within the Federalist party. Throughout the New England States it was generally feared that Pinckney would reach the presidency. For the prevention of such a result many shifts had to be resorted to. Oliver Wolcott's opinion, as early as October 17th, is a fair index of New England sentiment: "Of this there may be a degree of risk, though I am satisfied that it is not desired by Mr. Pinckney's most intimate and influential friends." He then advises the withholding of some votes from Pinckney which "may be given to an indifferent character," but the thought of Jefferson reaching the presidency extorts from him the following language: "It is possible that the event may be different from our wishes, but it

¹ Roulston's "Laws of Tennessee," edit. 1803, p. 109. Chap. iv. of Acts, 1st assembly.

will be the fault of the Constitution if such be the case.”¹ In the electoral college of Connecticut great uncertainty prevailed. The election was put off till evening, for the purpose of determining whether the character of later news received would necessitate the lessening of Pinckney's votes.

The latter lost five votes in that State. In the Massachusetts college, anxiety and uneasiness were plainly manifested. Indications at first pointed to a stampede “from Pinckney, but a letter from Hamilton urging the electors to perform their duty to the party and to Pinckney had a very salutary effect upon all but three, who had not the moral courage to rise from the plane of local and personal attachment. It is then no matter of surprise that Mr. Wolcott thought that ‘this mode of electing a President will probably operate pretty much like a Polish election and produce the same effect.’”²

An analysis of the vote of Pennsylvania and Maryland discloses a remarkable state of facts.

Though two Federalists were returned elected in Pennsylvania, Adams received only one vote, while Pinckney received two. The other vote was not scattered, but was cast for Thomas Jefferson on the ground, it seems, of carrying out the presumed intentions of the people. Thus did a Federalist give vent to his indignation in a New York journal:

“Do I choose Samuel Miles to determine for me whether John Adams or Thomas Jefferson is the fittest man for President of these United States? No, I choose him to act, not to think.”

¹ “Memoirs of Washington and Adams,” by Gibbs, vol. i., p. 386.

² *Id.*, p. 397.

This course of conduct on the part of an elector is unexampled in our history if the instance now to be related is not of a similar kind. The State of Maryland was represented by ten electors, and was therefore entitled to twenty votes. Of these Adams received seven, and two other Federalists six; while Jefferson was given four, and Burr only three. One elector must therefore have voted for Jefferson and a Federalist. The fact is, that a Republican elector, named Plater, cast a vote for Adams on the idea of making him Vice-President.

Mr. Gerry, a Massachusetts elector, informed Mr. Jefferson that his desire to vote for him as Vice-President could not be gratified, because it was impossible to give him any votes without annulling an equal number for Adams. "The Constitution, as it respects these elections, makes a lottery of them, and is, I think, imperfect." The solitary votes received by Adams in North Carolina and Virginia have been called by his grandson and biographer "accidental tributes of personal esteem."¹

In the Republican party, Jefferson was the real candidate for the presidency, and Burr's loss of votes is not to be so much considered. The result of the election was well summed up in the *New York Diary*, Feb, 15, 1797.

"Mr. Adams' election is not owing to a fair, decided expression of the public voice, but to the different modes prescribed in the several States for the appointment of electors.

"A uniform rule on this subject is a desideratum in our Constitution. Accident alone gave Adams the presidency. At any rate, Mr. Pinckney would have succeeded against him had not the 'wise men of the East' been guilty of political jugglery."

¹ "The Works of John Adams," by his grandson, vol. i., p. 494. Little, Brown, & Co., Boston, 1856.

The electoral votes were counted in the hall of the House of Representatives, on the 8th of February, 1797. Nothing occurred to disturb the solemnity of the occasion. The address of Vice-President Adams, the presiding officer of the meeting, deserves to be recorded. After reading from the report of the tellers, he continued :

“In obedience to the Constitution and law of the United States, and to the commands of both Houses of Congress, expressed in their resolution passed in the present session, I now declare that John Adams is elected President of the United States for four years, to commence with the fourth day of March next ; and that Thomas Jefferson is elected Vice-President of the United States for four years, to commence with the fourth day of March next. And may the Sovereign of the Universe, the ordainer of civil government on earth, for the preservation of liberty, justice, and peace among men, enable both to discharge the duties of these offices, conformably to the Constitution of the United States, with conscientious diligence, punctuality, and perseverance.” ¹

The inauguration ceremonies took place on the 4th of March, 1797, in Congress Hall, Philadelphia.

The oath of office was administered by Chief-Justice Ellsworth.

The presence of Washington and Jefferson no doubt inspired Adams with courage to undertake the great office of President.

¹ “Annals of Cong.” 4th Cong., 2d Sess., p. 2099

CHAPTER VIII.

ADAMS' ADMINISTRATION.—CAMPAIGN AND ELECTION OF 1800.

THE cabinet of Washington was retained by Adams. Timothy Pickering continued Secretary of State; Oliver Wolcott, Secretary of the Treasury; James McHenry, Secretary of War; Charles Lee, Attorney-General.

The French question and the laws that grew out of it were the all-absorbing topics of this administration. The expulsion from France of the Minister of the United States, Charles C. Pinckney, had broken off all diplomatic intercourse between those countries. The United States government, with a view to conciliation, sent a special embassy to Paris in September, 1797. The envoys were Charles C. Pinckney, Elbridge Gerry, and John Marshall. This embassy was shamefully treated. The representatives of the French government demanded large sums of money as the price of peace. To this insolent proposition Pinckney made the memorable reply: "Millions for defence, but not a cent for tribute," to the representatives of a government whose military forces had overrun and conquered Austria and Italy. This event aroused and quickened the patriotic and warlike feeling of the American people. The country was placed on a war footing. The army and navy were reorganized and increased. The Navy Department was created in 1798, and its civil head became a member of the cabinet.

Benjamin Stoddart was the first Secretary of the Navy.

Washington and Hamilton were called into service. Commercial intercourse between the United States and France was suspended by Act of Congress. Should war be avoided if possible? On that question the Federalist party divided. Notwithstanding the treatment of the embassy in 1797, Adams appointed in 1799 three envoys to negotiate anew a treaty of amity and commerce with France. This action was a surprise to the leaders of the war party. Several of the cabinet protested, as well as Hamilton and Morris. War was not formally declared, and the embassy negotiated with three commissioners, appointed by Napoleon, a treaty, not, however, entirely satisfactory to the American people. The articles of the treaty, while ratified by the French government, were only conditionally confirmed by the President and Senate.

Let us return to the year 1798. In the full tide of popular enthusiasm, a series of laws, commonly called the alien, sedition, and naturalization laws, were passed by Congress.

The alien law conferred upon the President the power "to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States."¹

The sedition law punished, by fine and imprisonment, any person who "shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing any false,

¹ Approved, July 6, 1798.

scandalous, and malicious writing or writings against the government of the United States, or either House of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either House of the Congress, or the said President, or to bring them or either of them into contempt or disrepute, or to excite against them, or either, or any of them, the hatred of the good people of the United States," etc.¹

According to the naturalization law, aliens must declare their intention five years before admission to citizenship, and have resided within the United States fourteen years, and five years within the State where the court was held.²

These acts were denounced as unconstitutional by the Republicans, and were the occasion of the "Kentucky and the Virginia resolutions of 1798." These resolutions proclaimed the right of the States as such to interpose and maintain their reserved rights. The fall elections of 1798, taking place, however, under the pressure of the war feeling, resulted in a Federalist victory. Despite their unpopularity, these obnoxious laws were retained on the statute-books, prosecutions went on, fines were levied, convictions were had.

In the early part of the year 1800, the struggle for the presidency began. Candidates for the presidency were nominated in Congressional caucuses convened in secret, in the city of Philadelphia. The Federalists determined that John Adams and Charles Cotesworth Pinckney should receive an equal number of Federalist votes. The Republicans also presented their candidates, but with the distinct understanding that Jefferson was designed for the presidency, and Burr for the vice-presidency.

¹ Approved, July, 1798.

² Approved, June 17, 1798.

Now was seen the danger lurking in the clause, authorizing the State legislatures to direct the manner of appointing the electors. In New York, the Assembly, in the spring of 1799, passed a district bill which was rejected by the Senate. Again, in 1800, a similar bill was introduced into the Assembly, at the instigation, it is said, of Aaron Burr, but was lost by a party vote of fifty-five to forty-seven. These attempts were unsuccessful, mainly through the opposition of the Federalist party. It was therefore understood by all that the next legislature would choose the electors. The result of the spring elections in New York City disappointed the expectations of those who had relied on an incoming Federalist legislature, and a movement was now set on foot by leading Federalists, at a meeting on the 3d of May,¹ at the national capital, then Philadelphia, to persuade Governor Jay to call a special session of the legislature for the purpose of immediately passing a district bill. The result of this meeting was, it seems, a letter from Hamilton to Jay, which found its way into the public prints, and encountered very strong criticism.² Among Jay's papers was discovered the original letter, on the back of which was written: "Proposing a measure for party purposes, which I think would not become me to adopt."³ About the same time in the neighboring State of Pennsylvania, there was in progress one of the bitterest electoral contests that has ever convulsed an American State. The two houses of the legislature were of opposite political principles. A previous

¹ "Life of Alexander Hamilton," by John C. Hamilton, vol. vii., p. 377. Houghton, Osgood, & Co., Boston, 1879.

² Appendix A, p. 261.

³ "Life of John Jay," by his son William Jay, vol. i. p. 412. J. & J. Harper, New York, 1833.

law, providing for a choice by the people, had expired, and could not be renewed without the consent of the legislature. In the spring of 1799, no agreement could be reached. The year 1800 was fast drawing to a close, and "nothing" was accomplished. Another legislature had adjourned. Was the little State of Rhode Island, with a population of 69,122, to have greater weight in an important national contest than the commonwealth of Pennsylvania, with a population of 602,365? That such injustice could be contemplated, much less perpetrated, was well calculated to unite State pride with party feeling. The rumor that Governor McKean intended to order an election according to the old law, gave additional bitterness to the contest. The governor, however, by special proclamation, October 18, 1800, summoned the legislature for the 5th of November, and on November 7th, sent in a message, in which he declared that his object was "to rescue Pennsylvania from the stigma of exhibiting to her sister States a fatal example of disorganization."¹ The Senate, by a vote of thirteen to eleven, refused to compromise; the Assembly, by a vote of fifty-four to twenty, would not yield. Among the meetings called to sustain the Senate was one held in Philadelphia, and presided over by Thomas Fitzsimons, a signer of the Constitution. Referring to the State and United States Constitution, it was said that, "to the latter no obedience can be valid, if the act of the legislature is unsupported by the former." A very serious question is raised by this point, as to how far the legislature can act in disregard of the State constitution. That the manner of choosing electors must be prescribed by a law of the State, it is reasonable to suppose. The legislature may be considered omnipotent

¹ *Aurora*, Nov. 10, 1800.

and sovereign as to any other power within the State, save that the constitution of the State must be obeyed in respect to the mode of passing a law.

On the 4th of November, the following editorial appeared in the *Aurora*:

“When the Constitution of the United States was under discussion, every man who dared to doubt of its excellence and of the infallibility of its authors was stigmatized as a friend of disorder and anarchy; yet behold, from its want of explicitness on the momentous object of choosing electors of a Chief Magistrate, it is almost in the power of two or three abandoned individuals, by disfranchising our State, perhaps, to impose a President on the Union contrary to the strongest wishes of the people.”

On the 15th, the same paper said it was not to be expected that “the powerful States of Virginia, New York, and Pennsylvania will submit to the government of a man who is not the choice under the Constitution, which will be the case if this State is deprived of its vote.”

When we consider that the Federalist majority in the Senate was only two; that the popular vote for governor was Republican; that the next legislature was to be Republican, we may judge of the state of feeling at that time. There is strong evidence for believing that the Federalist campaign of 1800 was planned on the idea that Pennsylvania would take no part in the election. After many threats on both sides, a compromise was finally arranged, by which the Assembly was to choose eight electors, and the Senate seven electors. Thus was the vote of a State bargained away. During more than a quarter of a century the action of the “Spartan band” of thirteen was always held up as a good argument for a uni-

form constitutional provision. The desire of change was not confined to Pennsylvania. We read of the pure and upright Charles Carroll advocating a change from the district to the legislative system.¹ The law, however, was left unrepealed, and the vote of Maryland was cast by electors chosen in districts. An analysis of this vote shows the fairness of the district system.

Adams and Jefferson each received five electoral votes; while under the general-ticket or legislative system, one of them would have received the entire electoral vote. Even the people of the old Granite State were distrusted by the Federalist leaders. Hitherto the electors of New Hampshire had been chosen under one of the forms of the general-ticket system. Upon the pretence that danger was likely to result from the excitement incident to a popular election, especially at a time when so much ill-will and hate were manifested toward their candidate, the Federalist legislature of New Hampshire took from the people this great power, and exercised it themselves.²

The reader may have asked himself, Were Massachusetts and Virginia inactive in this year of unrest and excitement? By no means; on the contrary, no States were more deeply interested in the issue of the contest. Both States had their favorite candidates in the field, and had begun the campaign early in the year. The condition of affairs in their own States was first investigated. One weak spot was found. An attack was now designed upon the district system, which had prevailed in the first three presidential elections. The Federalist leaders in Massachusetts resolved that the electors should be chosen by a

¹ "Works of Alexander Hamilton," by his son John C. Hamilton, 1851, vol. vi., p. 467, Carroll to Hamilton, August 27, 1800.

² "History of New Hampshire," by Barstow, p. 322.

joint ballot of the two houses of the legislature. "This secured to Mr. Adams the whole number of votes of that State," was the significant comment of a New York paper.

Madison was the prime mover in effecting a change in the "Old Dominion." In the Virginia House of Delegates he introduced a general-ticket bill, accompanied by a speech in which he declared that necessity compelled Virginia to take this step. In a letter to Jefferson, Jan. 9, 1800, he says: "As the avowed object is to give Virginia fair play, I think, if passed into a law, it will, with proper explanations, become popular."¹ Three days later Jefferson wrote a long letter to Monroe, justifying the step about to be taken by his friends at Richmond.² The serious part of this political manœuvring remains to be shown. The Federalist minority of the Virginia legislature, after nominating an electoral ticket, drew up an address to the voters of the State, which should be attentively read by all who wish to gain a clear insight into at least one of the causes which have retarded the growth of national sentiments. "We are apt to fancy ourselves called, as citizens of the United States, to vote for the highest officers of the government. But the late Assembly has separated us from our fellow-citizens of the Union, and compels us to speak the voice of Virginia only."³

The note to an address of a Federalist to the citizens of South Carolina on the issues of the day, deserves to be rescued from oblivion⁴:

¹ "Letters and Other Writings of James Madison," by order of Congress. Lippincott & Co., Phila., 1867, vol. ii., p. 155.

² "Life of Jefferson," by Randolph, vol. iii., p. 430; or "The writings of Jefferson," by H. A. Washington, vol. iv., p. 308, N. Y.

³ *Daily Advertiser*, June 6, 1800.

⁴ "Political Pamphlets," No 100, found in Congressional Library.

“It is but justice to many able and excellent men to say that a respectable minority exists in Virginia, truly attached to the Constitution and government, who lament and struggle against the errors of their State policy. This minority, so respectable in character, was increasing so rapidly in number in some parts of the State, that the legislature did not dare to trust the election of the electors of President and Vice-President to district elections, as had heretofore prevailed there, but enacted that there should be a consolidated vote by a general ticket, and overwhelmed the Federal interests which existed there.”

The plans of the party leaders were successful. The Federalist legislatures of Massachusetts and New Hampshire appointed twenty-two electors pledged to Adams, though the popular vote for governor in those States showed the injustice of their proposed action. In Massachusetts the Federalist candidate, Strong, received 19,630 votes, while his opponent, Gerry, received 17,019.¹ In New Hampshire the vote stood 10,362 to 6,039. In Rhode Island the Jefferson ticket, in spite of most adverse circumstances, was honored with 2,150 out of 4,490, thus defeated by only 193 votes. Yet a full Adams ticket was triumphant.² In Virginia the Jeffersonians carried every thing, and yet even there the small Federal contingent was overwhelmed; 17,080 citizens supported Jefferson, while 3,717 supported Adams.³ The latter, though in justice entitled to a share in the electoral votes, received none. The returns of elections in North Carolina showed that the Federalists made a gallant struggle in the old North State. They carried four districts out of twelve, and occasioned very

¹ “Life of Elbridge Gerry,” by Austin, vol. i., p. 302.

² The Rhode Island electors had hitherto been chosen by the General Assembly in “Grand Committee.” The general-ticket system prevailed thereafter.

³ *Federal Gazette and Baltimore Daily Advertiser*, Dec. 2, 1800.

close contests in several others. In some districts, however, the odds were heavily against them.

While the issue of the contest in Pennsylvania was still doubtful, Congress for the first time¹ was called upon to provide for the settlement of disputed electoral votes. In the Senate, Jan. 23, 1800, Ross, of Pennsylvania, a Federalist who had been beaten in the canvass of 1799 for the governorship, introduced a resolution for the appointment of a committee "to consider whether any and what provisions ought to be made by law for deciding disputed elections of President and Vice-President of the United States; and for determining the legality or illegality of the votes given for those officers in the different States." The history attaching to this bill is both interesting and important. It was the first serious attempt to solve the difficult question: "Who shall count the votes?" All later attempts made in Congress have been based upon this one as a guide and precedent, not only in the mode of procedure, but even in the language. The text of the bill is not given in the "Annals of Congress," except in connection with motions to reject certain sections. On account of the secrecy attending the proceedings of the Senate under the Federalists, we would not have been able to judge of the spirit and scope of the proposed law, had it not found its way into the leading opposition journal, the *Aurora*, February 19, 1800.

The appearance of the bill in print together with severe editorial comments aroused the greatest indignation among the Federalist Senators. The Committee on Privi-

¹ See proposed constitutional amendment of Senator Marshall in United States Senate; January 24, 1793, wherein appears: "Should any contest arise relative to any vote for President, the same shall be determined by the Senate; or should any contest arise relative to any vote for Vice-President, the same shall be determined by the House of Representatives."

leges on the motion of Mr. Tracy, February 26th, was ordered to make an investigation. A spirited debate over the freedom of the press took place upon the submission of the report.¹ The editor was cited to appear at the bar of the Senate, and accordingly did so. Cobbett's scathing criticism has, it is believed, never been quoted. After saying that the election bill of Ross "deserves to be recorded," he proceeds: "This bill was a sweeper. It would, had it passed into a law, have in reality placed the election in the hands of the Senate alone. That it would be much better for the country, were the election in the hands of the Senate is certain, but it would have been fairer to pass a law directly to that effect. To lead the sovereign people through the farce of an election, when the choice was finally to be made by thirteen men; seven of whom were to be nominated by the Senate, was a departure from that frankness which has been said to be the characteristic of republics."²

The opinion of Madison, as discovered in his letter to Jefferson, March 15, 1800 is so similar to that of the Englishman, that they should be read together. "Should the spirit of the bill be followed up, it is impossible to say how far the choice of the Executive may be drawn out of the constitutional hands and subjected to the management of the legislature. The danger is the greater, as the Chief Magistrate, for the time being, may be bribed into the usurpation by so shaping them as to favor his reelection. If this licentiousness in constructive perversions of the Constitution continue to increase, we shall soon have to look into our code of laws, and not the charter of

¹ *Aurora*, March 14 and 17, 1800.

² "Works of Peter Porcupine." Lond. ed. 1801, vol. xii. p. 35. See p. 53 of this book.

the people, for the form as well as the powers of our government.”¹

The bill was long and complicated. The following were its main features :

Each House was to choose by ballot six members ; these twelve together with the Chief-Justice of the United States were to form a Grand Committee, whose sessions were to be held in secret. To this committee was to be given the power of examining and finally deciding all disputed questions. Judicial functions were granted ; authority was given to send for persons, papers, and records, and to have the assistance of United States marshals to serve processes. Specific jurisdiction was given to inquire into the following cases : Whether the presidential candidates had the necessary qualifications ; whether the electors were qualified ; whether the State law had been followed ; whether the electors had acted illegally or corruptly ; and whether the directions as to the time of voting, had been obeyed.

In the Senate, several changes were made in the proposed bill ; one of them being that the Senate was to name three Senators, from whom the House should choose the chairman of the Grand Committee. The bill, thus modified, passed by a vote of 16 to 12, but on being sent to the House, met with a strong opposition from several distinguished Federalists, among whom may be mentioned John Marshall and James A. Bayard. The House, as in later years, was found true to the principles of republicanism. Here few were found advocating the justice of allowing the decision of the Grand Commission to be final, or the right of the Senate to name the odd man.

¹ “ Letters and Other Writings of James Madison,” published by order of Congress. Phila. : J. B. Lippincott & Co., 1867, vol. ii., p. 157.

While the bill was before the House a radical change was made in the whole plan and scope, by the committee to whom it had been referred. A joint committee of eight, composed of four members from each House, was to be formed with power to examine into disputes relative to the presidential election, with the restriction of not questioning the number of votes received by electors. The joint committee was to make a report, which was to be placed before the two Houses as a guide during the proceedings.

If objections to a vote or votes of a State were based upon the report, and were seconded by one Senator and one Representative, "Each House shall immediately retire without question or debate, to its own apartment, and shall take the question on the exception, without debate, by ayes and noes." No vote was to be rejected without the concurrence of both Houses. If an objection was offered which was not covered by the report, and in regard to referring which to the committee the two Houses were unable to agree, the same rule was to be followed.

The bill as amended was returned to the Senate. The latter body made several changes in which the House refused to concur. The Senate declined to recede and the bill was therefore lost. The persistency of the Senate in adhering to a most dangerous method of deciding whether votes should be counted or not, was the chief cause of the failure of the bill. The plan of the Senate was practically the same as the twenty-second joint rule.¹ The concurrence of both Houses was required to admit the votes of a State, thus giving to either House the power of throwing the election of a President into the

¹ See p. 172.

House of Representatives, and of a Vice-President into the Senate.

During the progress of the bill amendments were offered in both Houses by members of the Republican party, favoring the decision of disputed questions "by a majority of the members of both Houses then present." The action of both parties recognizes the existence of a power somewhere in Congress to reject the votes of a State; yet this opinion was not unanimous, for a most remarkable speech, in view of the decisions of the Electoral Commission, was delivered by Mr. Charles Pinckney, of South Carolina. Most extreme ground was taken. Congress did not possess the right even to question whether votes were constitutionally or properly given. In the State governments, he believed, rested the power to decide all disputed questions as to the qualifications of electors. There must be, he argued, "mutual confidence" between the Federal and State governments. The same questions that have been brought forward in later years were discussed by him, and answered in the same manner. The case of an unqualified elector, irregularities in the electoral votes, and in the conduct of the Executive of a State, and the disputed power of taking testimony, were all touched upon.

In every case Pinckney claimed that Congress ought to refrain from interference. In fact, the decision of the Electoral Commission, "that it is not competent under the Constitution and the law as it existed at the date of the passage of said act, to go into evidence aliunde the papers opened by the President of the Senate, etc,"¹ carried out to the letter the principle advocated by Pinckney. The great body of the members, as we have already inti-

¹ See p. 221.

mated, were of opinion that Congress must interpose its authority in cases of the violation of the Constitution and law by any State or body of electors. But these words of Pinckney should not be forgotten: "It is, in short, nothing less than holding out to the minority in all the States a temptation to dispute every return, and to always bring forward double returns."¹

In the New York *World* of Aug. 15, 1877, appeared a copy of a paper in the handwriting of Thomas Jefferson, and said never to have been published before. The party from whom the editor received the document thinks that it contains a motion or amendment to be submitted to Congress, on the contingency of a dispute over the eligibility of a Pennsylvania elector in 1796.

The editor, on the other hand, believes that it was prepared for the guidance of the Republican members in their opposition to the Ross bill. A letter to Madison from Jefferson, March 4, 1800, may throw some light on the subject:

"To-day I forward Bingham's amendment to the election-bill, formerly inclosed to you. Bingham's amendment was lost by the usual majority of two to one. A very different one will be proposed, containing the true sense of the minority, viz.: That the two Houses voting by heads shall decide such questions as the Constitution authorizes to be raised."²

On the 25th of March a long and carefully worded amendment was offered in the Senate, and supported by his friends.³ Every word of the preamble to the amend-

¹ The Ross bill and amendments thereto can be found in "Counting the Electoral Votes." Proceedings and debates of Congress, printed by order of House of Representatives, Dec. 23, 1876, 44th Cong., 2d sess., page 16.

² "The Writings of Thomas Jefferson," by H. A. Washington, vol. iv., p. 322. New York.

³ "Annals of Cong.," 6th Cong., p. 119.

ment is found in the paper referred to. We find in the paper, however, a proviso, qualifying the power of Congress, which is not contained in the amendment, because its principle had been already recognized by both Houses.

Jefferson's language was as follows: "Provided that the certificate of the Executive of any State shall be conclusive evidence that the requisite number of votes has been given for each elector named by him as such."

It may be here remarked that the words in the bill were: "Provided always, that no petition or exception shall be granted or allowed by the Grand Committee, which shall have for its object to draw into question the number of votes on which any elector in any of the States shall have been declared appointed."

Whether Jefferson believed that Congress could not go behind the certificate of the governor, will not be here discussed, but it is certain that the great majority of the members of Congress held the opinion that the declaration of the State canvassing board was not reviewable as to the number of votes an elector received.

Whether fraud and corruption would vitiate the proceedings of the board was not then taken into consideration. On the 14th of May, 1800, Congress adjourned without coming to any agreement upon the bill. The administration party began to lose its hold on the country. The dismissal of two Cabinet officers¹ in May, closely following the New York election, and the appearance of a letter of Hamilton attacking the President, portended the downfall of the Federalist party. The election was held in November on various days, and resulted in nothing definite. The balloting in the electoral colleges on the 3d of December was therefore awaited with great anxiety. The friends

¹ Pickering and McHenry.

of Pinckney and Burr entertained grave suspicions that they would not receive the full party vote. Pinckney could not help remembering that his brother, Thomas Pinckney, in 1796 lost many New England votes; and Burr had not forgotten that Virginia gave fifteen complimentary votes to Samuel Adams. Yet everywhere the Federalist electors were true to the compact, except Arthur Fenner, a Rhode Island elector, who voted for Adams and Jay.

Mr. Pinckney refused to accept the votes of South Carolina unless they were also given to Mr. John Adams. Such self-sacrifice is as rare as it is honorable. Jefferson and Burr were honored with the entire electoral vote of the Republican party; but there is sufficient evidence for believing that a scheme was devised to deprive Jefferson of a vote in New York. It was rumored that unless a strict watch was kept upon the members of the electoral college of that State, a vote would be scattered.

Cheetham, in a letter to Jefferson, speaks of "one New York elector, Lispenard," as undecided. Both John C. Hamilton and Henry S. Randall agree that the adoption of a motion, that each elector should vote openly, frustrated the plot.

On Feb. 11, 1801, the electoral votes were counted. At this point the action of Congress, upon the receiving of the Georgia votes, deserves particular notice.

In Davis' life of Burr, Mr. Jefferson is charged with deliberately refusing to examine the certificates of the Georgia electors, before their votes were counted. Randall pronounces the statement "pure fiction." Davis obtained his information from ex-members of Congress, who declared that Jefferson's countenance changed when the Georgia votes were being counted.

The official record in the "Annals of Congress," Feb. 11, 1801, furnishes no light on the subject, save to convey the impression that there is not the slightest foundation for the charge.

As conscious innocence and rectitude of conduct can never suffer from the marshalling of the true facts of history, it is proposed to produce contemporaneous evidence which has never before been noticed in connection with this charge. In a supplement to the *Philadelphia Gazette* (recopied in the New York journals), is found a dispatch dated Washington, Feb. 11, 1801, 3.30 o'clock P.M., containing the following :

"The tellers declared there was some informality in the votes of Georgia, but believing them to be the true votes, reported them as such."

These very same words are found in the suppressed "History of the Administration of John Adams," by John Wood, page 329, republished by John H. Sherburne.

A candid survey of the state of affairs at that time will show the fallacy of supposing that Jefferson acted in a high-handed or deceptive manner. The two Houses of Congress were decidedly Federalist. Two of the three tellers were Federalists. Their hatred and distrust of Jefferson, mingled with bitter desperation over the late defeat, will not support the theory that Jefferson acted illegally, and that the eyes and ears of the last Federalist Congress were closed—the former, to the conduct of Jefferson ; the latter, to the language of the tellers.

That the Georgia certificate, judged by the correctness and accuracy of the certificate of 1884, is technically and perhaps fatally defective, is certain. If the Georgia votes ought to have been rejected, the fault lies not with Mr.

Jefferson, but with the two Houses. The tellers, according to the usual joint resolution, were "to make a list of the votes for President and Vice-President of the United States, as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote; which shall be entered in the journals; and if it shall appear that a choice hath been made agreeably to the Constitution, such entry on the journals shall be deemed a sufficient declaration thereof."¹

Jefferson and Burr received 73 votes, while Adams received 65 votes, and Pinckney 64 votes, and John Jay had one vote. Jefferson and Burr were therefore tied.

The official announcement that no choice had been made, and that "the remaining duties devolve on the House of Representatives," stated what had been already for many weeks the chief topic of conversation.

The Constitution was now to be tested in regard to the practical workings of a Federal election in the House. The small States were now given an opportunity to show the excellence of this method, and how far it was adapted to the genius of the American people. Previous to the day for counting the votes, the usual joint resolution was drawn up, and in addition, the House, anticipating an eventual election, adopted certain rules which were to be observed in the choice of a President. They are eight in number. The proceedings were to be held with closed doors, and the House was not to adjourn until a choice had been made. No business could be transacted until it was ascertained that the constitutional number of States was present. Rule VI. regulated the mode of balloting. The delegation of each State was to appoint one or more tellers.

¹ "Annals of Cong.," 6th Cong., p. 736.

Duplicates of the vote of each State were to be made. These duplicates were to be finally deposited in two ballot-boxes, and the votes in these boxes were to be counted by sixteen tellers—one from each State.

The House of Representatives had now become a temporary electoral college. Its choice was restricted to two candidates. It contained one hundred and six members, of whom fifty-eight were Federalists, and forty-eight were Republicans. At the roll-call all answered except two, one of whom had died, and the other was very ill. The issue of the election was awaited with great anxiety. A rumor was spreading that a plot had been arranged to disappoint the friends of Jefferson by bestowing the first office upon Burr. It was reported that leading Federalists were arranging for an interregnum by preventing an election. Some such scheme is hinted at by President Adams, in one of his letters :

“ I know no more danger of a political convulsion if a President *pro tem.* of the Senate, or a Secretary of State, or Speaker of the House should be made President by Congress, than if Mr. Jefferson or Mr. Burr is declared such.”¹

The result of the first ballot was as follows: Jefferson received the votes of New York, New Jersey, Pennsylvania, Virginia, North Carolina, Georgia, Kentucky, and Tennessee, eight States in all ; while six States, namely, New Hampshire, Massachusetts, Rhode Island, Connecticut, Delaware, and South Carolina supported Burr ; Vermont and Maryland were divided in sentiment.

If the ballots had been cast per capita, Burr would have received fifty-three and Jefferson fifty-one. Up to mid-

¹ Adams to Gerry, Feb. 7, 1801. “ The Works of John Adams,” by his grandson, vol. ix., p. 97, ed. of 1856.

night nineteen ballots had been taken, and no choice had been made. One vote more was necessary to elect Jefferson, Could it be obtained? Both sides were making desperate efforts to gain over certain doubtful members.

Bayard of Delaware, Morris of Vermont, or any one of the four Federalist members of Maryland could give a State to Jefferson. On the other hand, Bailey and Livingston of New York, with Lynn of New Jersey and Dent of Maryland, could give three additional States to Burr. The terrible uncertainty as to the result, and the passions aroused by the desperate efforts of many to force upon the nation an usurper in fact, are well seen in the letter of Gallatin to James Nicholson, Feb. 14, 1801:

“It is the most impudent thing, that they with only six States and two half-States, represented on this floor only by thirty-nine members, should expect that a majority of eight States and two half-States, represented on the floor by sixty-seven members, should give up to the minority, and that, too, against the decided opinion of an immense majority of the people.”

This letter was written after three days had been spent in fruitless balloting. The state of affairs on the next day, Feb. 15th, may be judged from a letter of Jefferson to Monroe, in which the following statements are found¹:

“Four days of balloting have produced not a single change of a vote. Yet it is confidently believed that to-morrow there is to be a coalition. I know of no foundation for this belief. If they could have been permitted to pass a law for putting the government into the hands of an officer, they would have certainly prevented an election. But we thought it best to declare openly and firmly, one and all, that the day such an

¹ “The Writings of Thomas Jefferson,” etc., ed. of 1853, vol. iv., p.354 ; edited by H. A. Washington.

act passed, the Middle States would arm, and that no such usurpation, even for a single day, should be submitted to."

"Many attempts have been made to obtain terms and promises from me. I have declared to them unequivocally that I would not receive the government on capitulation; that I would not go into it with my hands tied."

This letter of Jefferson read in connection with the sworn statement of Mr. Bayard,¹ shows that while all was in doubt and uncertainty, Federalist members of Congress were in communication with friends of Jefferson. What may have been the motive which prompted Bayard and a few of his colleagues to give their votes on certain conditions, and to what extent Jefferson had knowledge of the final negotiations, need not be here discussed. The rumor itself is sufficient argument against any law which will place in the hands of a few men, the power of choosing a President, through threats.

During this exciting political scene, Adams, the President, was, of course, at Washington, as was also Jefferson. Burr, whose position was one of extreme delicacy, was at his post in Albany, as a member of the New York legislature; while Hamilton, the secret but powerful actor in this drama, was in New York City and in constant communication with the leading Federalists. His patriotism in this crisis would alone entitle him to the lasting gratitude of the American people.

The whole system of government was exposed to dissolution from the wild efforts to exclude Jefferson, even at the risk of an interregnum.

At length four Federalist members came to a mutual resolution that the attempt should not be carried beyond

¹ "Statesman's Manual," vol. i., p. 224.

a certain point. On the 17th of February, the thirty-sixth ballot was taken. Morris withdrew, leaving Mathew Lyon, who had been convicted of sedition, to cast the vote of Vermont for Jefferson. The four Federalist members of Maryland cast blank ballots, thus giving another State to Jefferson. This ballot was therefore taken with success. Jefferson received the support of ten States; Burr, of four States; while two States voted in blank. Thus ended one of the severest struggles ever witnessed on the floor of the House of Representatives. Jefferson's election was now made certain. The congressional elections of 1800 having resulted in a return of a Republican majority to both the House of Representatives and the Senate, the two important branches of the government were to be under the control of the Republicans.

To retain the control of the judiciary, a law was passed by the expiring Federalist Congress in 1801, creating six Federal circuits, with eighteen justices. Adams appointed these judges in the closing days of his administration, and they were immediately confirmed by the Senate. They were called by the Republicans, "Midnight Judges of John Adams," on that account. The law establishing these courts was afterward repealed, and the judges lost their positions.

CHAPTER IX.

JEFFERSON'S ADMINISTRATION.—XII. AMENDMENT.

ON March 4, 1801, in the city of Washington, Jefferson was inaugurated President, in the fifty-eighth year of his age. The principles enunciated in his inaugural address constituted a political code for the guidance of his countrymen. Victory had softened the bitterness of political strife. Now, "We are all Republicans,—We are all Federalists."¹ The oath of office was administered by Chief-Justice Marshall. James Madison became Secretary of State, Henry Dearborn, Secretary of War, and Levi Lincoln, Attorney-General, Albert Gallatin, Secretary of the Treasury, and Robert Smith, Secretary of the Navy. Massachusetts had two representatives—Dearborn and Lincoln.

An important and trying period had just closed. A new order of things now began. The experiment was interesting. A party in opposition for twelve years was now entrusted with the control of the executive and legislative departments of the government. The reorganization of the civil service was one of the difficult tasks that engaged the attention of Jefferson. Corrupt and partisan officials were removed. Jefferson proceeded with deliberation. His answer to the remonstrance of the merchants of New Haven against the removal of the collector of that port, states the principles which guided his conduct. He

¹ Inaugural Address.

said: "that he found nearly the whole offices of the United States monopolized by the Federalists. Vacancies by death are few, by resignation none." "He would," he says, "have gladly left to time and accident the filling of offices by the Republicans, if the latter had enjoyed a moderate participation of office. But their total exclusion calls for prompter corrections; and when equity has been done, then the only questions concerning a candidate shall be: Is he honest? Is he capable? Is he faithful to the Constitution?"¹

In the sphere of diplomacy, the negotiations with Napoleon, which ended in the withdrawal of French power from our midst, and in the increase to our national domain, out of which have been carved seven additional commonwealths, were worthy of the days of Richelieu.

The country had hardly recovered from the excitement occasioned by the struggle in the House of Representatives, before a universal agitation began in favor of so amending the Constitution as to prevent a repetition of the scenes of 1801.

Much good and earnest work was accomplished in the State legislatures, which needs not to be here recapitulated. Gallatin, an exponent of Republican sentiment, declared himself in favor of a "general constitutional provision," whereby each State would be divided into districts.² Hamilton's efforts to influence the sentiment of his State are most commendable. The dissatisfaction then existing afforded him an excellent opportunity to

¹ "The Writings of Thomas Jefferson," by H. A. Washington, vol. iv., p. 402.

² Gallatin to Jefferson, Sept. 14, 1801. See "The Writings of Albert Gallatin," vol. i., p. 49. Edited by Henry Adams. Phila.: 1879. J. B. Lippincott & Co.

propose the plan of electing a President, which he had so ably advocated on the floor of the Federal Convention, fifteen years before. Through the assistance of De Witt Clinton, then a member of the New York legislature, resolutions embodying the sentiments of Hamilton were adopted by that legislature, and forwarded to Congress.

How characteristic of Hamilton is the language found in one of his letters to Morris, April 6, 1802: "It has ever appeared to me as a sound principle to let the Federal Government rest as much as possible on the shoulders of the people, and as little as possible on those of the State legislatures."¹

The legislatures of other States had likewise expressed their desire for a change in the law. But Congress was to be the arena upon which must be fought the battle. The first session of the seventh Congress began on the 7th of December, 1801. In accordance with the desire of the great body of the people, resolutions providing for a constitutional amendment were offered in both Houses. The chief object aimed at by all, was that instead of voting indiscriminately for two persons, the electors should particularly designate the person voted for as President, and the person voted for as Vice-President.

In the Senate, several members advocated a radical change in the whole plan, but, as usual, nothing was accomplished. On the 15th of February, 1802, Hamilton's resolutions were presented in the House by Walker, of New York.

The district plan failed, but the clause of designation succeeded, 47 to 14. But the same was lost in the Senate by one vote. Gouverneur Morris, Senator from New York,

¹ "Works of Alexander Hamilton." Edited by his son, John C. Hamilton. 1851., vol. vi., p. 556.

wrote a letter to the New York legislature,¹ explaining and defending his vote, in rejecting the proposed amendment. He said: "the vice-presidency would hereafter be but as a bait to catch State gudgeons."

But the chief and decisive struggle took place in the next Congress, whose first session was held on the 17th of October, 1803. Resolutions were immediately offered and committees appointed. The debate took a wide range. The question of State rights was ably argued. The small States saw power slipping from their grasp. The motives of those favoring a change were assailed with bitterness. The desire of amendment was ascribed to personal resentment; the result of the amendment was predicted to be the dissolution of Federalism. It was claimed that the proposed change would violate the Constitution in its spirit and design. The same claim was advanced in the debate of 1826 by Everett.²

A very strong objection was offered to that part of the new plan which required the persons to be particularly designated. The office of Vice-President, it was urged, would become of slight importance, and would be filled by men not as capable and suitable as those chosen under the old law. This objection has been favorably noticed by Story, Kent, and Duer. Its justice and truthfulness have been well illustrated in the actual workings of the new law. The interests of the small States were championed by Uriah Tracy in a long and eloquent speech. The real point at issue was, whether the small States should retain their power. Hence the fight over the number of candidates to be sent to the House of Representatives. On December 2d the proposed amendment passed the

¹ 1802, December 25th. "Life of Gouverneur Morris," by Jared Sparks, vol. iii., p. 173. Boston, 1832.

² See p. 252.

Senate by a vote of 22 to 10, but in the House the required constitutional number of votes was secured only by the persistency of Speaker Macon, in claiming and exercising the right to vote as a member. Several instances have since occurred of a Speaker exercising this right. During the calling of the roll upon the passage of the Electoral Commission Bill of 1877, Speaker Randall recorded his vote.

One step in the progress of reform had been taken, but more yet remained to be done. The American people, acting through the State legislatures, were to pass judgment upon the work of Congress. On the 12th of December the amendment was sent to the States for ratification. There the opponents of the amendment did not relax their efforts. The most specious arguments were employed. The fell spirit of sectional jealousy was invoked. The rights of the State were said to be imperilled. The following address to the people of Connecticut summarized the main arguments against a change in the Constitution:

“The plan of this amendment is to bury New England in oblivion, and put the reins of government into the hands of Virginia forever. They, the Democrats, have seized on a moment of delirious enthusiasm to make a dangerous inroad on the Constitution, and to prostrate the only mound capable of resisting the headlong influence of the great States, and preserving the independence and safety of the small ones.”

This appeal to the people of Connecticut was successful. The legislature of that State rejected the amendment as also did Massachusetts and Delaware. The latter State, the home of federalism and conservatism, was the first to reject the amendment, as she was the first to adopt the Constitution. In both cases, self-preservation prompted her action. The other States, constituting three fourths

of the Union, ranged themselves on the side of progress, and gave their assent to the proposed amendment. The three dissenting States placed their refusal on the technical plea that the Constitution requires the concurrence of two thirds of the members of each House to recommend a constitutional amendment. Those opposed to the amendment had made use of the same argument in Congress, but it is now an unwritten law that two thirds of a quorum is simply meant.

The XIIth Amendment was declared adopted by a proclamation, issued on the 25th of September, 1804, by the Secretary of State, Madison. Congress, anticipating the adoption of the amendment, passed an act carrying it into effect.

Though the Constitution had been amended in several particulars, many doubtful, unjust, and dangerous provisions were still retained. We find the same ambiguous words "the votes shall then be counted." No change had been made in the manner of choosing a President in the eventual election, but the chances of its occurrence were lessened.

The members of the House, though elected more than two years previous, were still to choose a President.

The danger of an interregnum was partially but not entirely removed. By the XIIth Amendment, the person chosen Vice-President either by the electors or by the Senate succeeds to the presidency, if the House fails to make a choice before the 4th of March; but the question of to-day is, who shall succeed if the count be not completed by reason of a disagreement between the two Houses?

CHAPTER X.

JEFFERSON'S ADMINISTRATION CONTINUED.—FIFTH AND SIXTH PRESIDENTIAL ELECTIONS.

THE presidential election of 1804 was peaceful and devoid of interest. A caucus of Republican members of Congress was held on the 25th of February, 1804, in the Senate-chamber. One hundred and ten members were present. Jefferson was unanimously named for the presidency. A slight struggle ensued for the second place on the ticket. The ballot was as follows: Clinton, 67; Breckenridge, 20; Lincoln, 9; Langdon, 7; Granger, 4; Clay, 1. Clinton was thereupon declared the nominee. The gifted but unscrupulous Burr had lost the confidence of his party. The Federalists placed in nomination Charles Cotesworth Pinckney of South Carolina and Rufus King of New York. The latter had just been removed from the post of Minister to Great Britain.

In Massachusetts, the Republicans tried to restore the district system, but were unsuccessful. The Federalists, hoping to secure the entire electoral vote of the State,¹ established the general-ticket system. The Republican minority in the legislature solemnly protested against the law, and among other reasons declared that the law would deprive one party of its due weight in the appointment of the President of the United States.¹ The result of the election disappointed the authors of the bill. The Re-

¹ *The American Citizen*, June 21, 1804.

publicans carried the State.¹ The Federalist governor of New Hampshire vetoed an electoral-district bill. The Republicans also carried that State.² The popular vote in Pennsylvania stood 22,103 to 1,179 in favor of the Republicans; in Ohio, 2,593 to 364 the same way; in Virginia, 13,100 for Jefferson and none for Pinckney. Pinckney only received 14 votes—the entire vote of Connecticut and Delaware and two district votes in Maryland. Jefferson received 162 votes, and was triumphantly re-elected.³ The electoral votes were counted on the 13th of February, 1805. The man whose hands were red with the blood of Hamilton, and whose heart was full of treason, presided over the two Houses.

Was he to count the votes? No; even *he* said: "You will now proceed, gentlemen, to count the votes as the Constitution and laws direct."⁴ Yet on the following day, the Senate directed Aaron Burr to prepare a certificate, wherein he is said to have counted the votes.⁵

Levi Lincoln resigned the post of Attorney-General, and was succeeded by Robert Smith, then Secretary of the Navy. The latter's position was filled by the appointment of B. W. Crowninshield.

The secret and treasonable expedition of Aaron Burr in the Western country, engaged the attention of the government. But especially did the European question assume a most threatening aspect. The Berlin and Milan decrees of Napoleon, and the British Orders in Council, together with the Embargo laws of Congress, had prostrated

¹ Jefferson, 29,424; Pinckney, 25,477; majority, 3,947.

² Jefferson, 9,088, and Pinckney, 8,386.

³ Six States voted by legislature, seven by the general-ticket, and four by the district system.

⁴ "Annals of Cong.," 8th Cong., p. 56.

⁵ "Annals of Cong.," 8th Cong., p. 58.

American commerce. In New England all trade had ceased, and discontent was taking the shape of open opposition to the general government. The highest qualities of statesmanship were now necessary. Jefferson's retirement from the presidency has been the subject of discussion as to his motives for so doing.

During the last two years of his second term, the legislatures of Georgia, Maryland, New Jersey, North Carolina, Pennsylvania, and Vermont, the Senate of New York, and the House of Delegates of Virginia, asked him to accept a third term.¹

His replies are mostly written in the same language. In his answer to the Vermont address, December 10, 1807, he said :

"That I should lay down my charge at a proper period is as much a duty as to have borne it faithfully. If some termination to the services of the Chief Magistrate be not fixed by the Constitution or supplied by practice, his office, nominally for years, will in fact become for life, and history shows how easily that degenerates into an inheritance. Believing that a representative government, responsible at short periods of election, is that which produces the greatest sum of happiness to mankind, I feel it a duty to do no act which shall essentially impair that principle. I should unwillingly be the person who, disregarding the sound precedent set by an illustrious predecessor, should furnish the first example of prolongation beyond the second term of office."²

One of his letters is a complete answer to the advocates of the third term :

¹ "Statesman's Manual," vol. i., p. 264.

² "Writings of Jefferson," edited by H. A. Washington, vol. viii., p. 121, ed. of 1853.

‘I am sensible of the kindness of your rebuke on my determination to retire from office, at a time when our country is laboring under difficulties truly great. But if the principle of rotation be a sound one, as I conscientiously believe it to be with respect to this office, no pretext should ever be permitted to dispense with it, because never will there be a time when real difficulties will not exist, and furnish a plausible pretext for dispensation. You suppose, I am ‘in the prime of life for rule.’ I am sensible I am not, and before I am so far declined as to become insensible of it, I think it right to put it out of my own power.”¹

It was not difficult to name his successor. The mantle of Jefferson was to fall upon his Secretary of State.

On the 19th of January, 1808, was issued the call for the caucus on the evening of the 23d. “I deem it expedient,” was the language of the call.² Members were requested to attend and aid the meeting with their influence, information, and talents. Madison received 83 out of 89 votes. Clinton was renominated for the vice-presidency. The Federalist candidates were the same gentlemen who ran in 1804. This election gave rise to a most grave and important question of constitutional law. Have the two houses of a State legislature the power to direct the manner of appointing electors without consulting the governor? The two houses of the Massachusetts legislature had adjourned their spring session without passing an electoral law, with the intent to meet again in November. The meaning of this action was manifest. The governor of Massachusetts was a Republican, James Sullivan. A Republican newspaper of New York had said

¹ Jefferson to Henry Guest, *id.*, vol. v., p. 407; see also Jefferson to J. Taylor, January 6, 1805, *id.*, vol. iv., p. 565.

² *National Intelligencer*, January 20, 1808.

that "the legislature could not enact any law which is not acceptable to the Republican governor." The *New York Evening Post*, of June 2d, replied that "the governor has nothing to do with it." Governor Sullivan, in a special message on June 9th, claimed the right to have the bill sent to him for approval or disapproval. Precedent, he declared, was in his favor. The district bills of 1788, 1792, 1796, and the general-ticket law of 1804 were all sent to the governor for approval. Even the joint-ballot bill of 1800 became law in the same way. It may be also added that the district bill of 1812 was signed by Governor Strong, and that of 1820 by Governor Brooks. The real purpose of the delay was to afford a pretext to the legislatures to assume the duty of choosing the electors. At the adjourned special meeting in November, the majority in both houses passed resolutions declaring the practice of former years "mere surplusage," and themselves appointed nineteen Federalist electors. The minority, deeming the proceeding unconstitutional and void, refused to participate in the election.

The ceremony at the electoral count on the 8th of February is interesting. Senator Milledge, of Georgia, whose term was just expiring, presided at the joint meeting. The privileges and prerogatives of the House were discussed in that body prior to the meeting. It was resolved to invite the President of the Senate to occupy the Speaker's chair, as a matter of favor and courtesy. On the day preceding the contest, petitions were forwarded from various towns in Massachusetts, praying for an investigation into the conduct of the legislature of that State.

In the House of Representatives, a short debate took place upon the expediency and legality of acting upon the petitions. The State-rights men denied the existence

of any power in Congress to review the action of the State legislature. The national men with great earnestness, denounced the action of the State legislature as "irregular and unconstitutional," and demanded action upon the petitions "for the purpose of preventing the establishment of so dangerous a precedent."¹ The House received the petitions and sent them to the Senate, where they were laid on the table. The opinions expressed by many in this debate, and the votes for receiving the petitions, led to the conclusion that in the case of a close election the votes of electors chosen in the manner described would be liable to be rejected. Twelve years later, a prominent Senator, Daniel Dickerson of New Jersey, gave his opinion that these votes were illegal, and would rightfully have been so declared, if they were necessary to the result.²

The vote was announced as follows :

For President, James Madison.	.	.	.	122
" " Charles C. Pinckney	.	.	.	47
" " George Clinton	.	.	.	6
For Vice-President, George Clinton	.	.	.	113

Madison was declared President, and Clinton Vice-President.

¹ "Annals of Cong.," 10th Congress, p. 343.

² February 11, 1819, in U. S. Senate.

CHAPTER XI.

ADMINISTRATIONS OF MADISON AND MONROE. — THE SEVENTH, EIGHTH, AND NINTH ELECTIONS.—SCENES IN CONGRESS.

ON the 4th of March, 1809, James Madison was inaugurated President of the United States. Robert Smith, of Maryland, was appointed Secretary of State; William Eustis, of Massachusetts, Secretary of War; Paul Hamilton, of South Carolina, Secretary of the Navy. Albert Gallatin still remained Secretary of the Treasury; and Caesar A. Rodney, Attorney-General.

The mighty European conflict still continued. American commerce was banished from the seas. The history of this administration is a narrative of high-handed outrages on the part of England and France. But the critical moment had now arrived. A long series of aggressions upon American commerce had culminated in a declaration of war by the United States against England.¹ The deep national feeling aroused by these aggressions had sent to Congress new men, who were imbued with a warlike and patriotic spirit.

The renomination of Madison² and the declaration of war formed part of one and the same plan.

The Republican party had now become a war party, with all its present burdens and future glories.

¹ June 18, 1812. "Statesman's Manual," vol. i., p. 354.

² Nominated at a caucus, May 18, 1812, and Elbridge Gerry for Vice-President.

The opposition was what might be called a peace party. New England federalism dominated its councils, while in New York and Pennsylvania, the continued rule of the Virginia element gave impetus to the movement. The refusal of the friends of De Witt Clinton to support Madison was the first break in the Democratic (then Republican) party, on the question of Southern supremacy.

The discontent in New York took the shape of a movement to nominate Clinton for the presidency. The Federal party, perceiving that the only possible chance of defeating Madison was a coalition with the Clintonians, assembled in a convention in the city of New York, in the month of September, 1812, and consulted in secret for three days. Eleven States were represented. Vermont was the only New England State missing, while South Carolina alone of the Southern or Western States was represented. All the Middle States were there.

Clinton had already been proposed by the Republican members of the New York legislature on the 28th of May, and the results of the campaign had been forcibly and tersely stated in an address issued on the 17th of August by the New York committee.¹

The address reflected the sentiments of the Federalists on many points. But several of the ablest of their leaders, including Rufus King, opposed the taking up of Clinton. Their opposition was unavailing. The convention adopted Clinton as their candidate for President, and for Vice-President, Jared Ingersoll (a moderate Federalist), who had been placed on the ticket by the Clinton Republicans. This national contest was warmly waged. Animosities were aroused in New York State that were never healed. In Massachusetts it gave rise to that most unpopular po-

¹ *Niles' Weekly Register*, vol. iii., p. 17.

litical word, "gerrymandering." During the administration of Governor Elbridge Gerry, a Republican, an accidental Republican legislature of Massachusetts so districted that State that a minority was easily converted into a strong majority.

The Republican politicians had in view the approaching presidential election. Before the latter took place, Gerry was succeeded by Caleb Strong, a well-known Federalist. The lower house of the legislature had also become Federalist. The Senate now remained the sole branch of the State government in the hands of the war party. The conduct of this Republican Senate equalled that of the Federalist Senate in Pennsylvania in 1800. Defiance of the public will was its predominant feature. In the summer session of 1812, the Assembly committee proposed a general-ticket and a fair district bill. The only answer given by the Senate was a choice between the gerrymandered congressional districts or nothing at all. The failure to agree resulted in an expensive extra session for the sole purpose of passing an electoral law.

The *New York Post*,¹ as well as the *Boston Gazette*, usually so conservative, called upon the governor to issue his precept for an election by the people. This advice, if followed, would have led to disastrous results, and have established a most dangerous precedent. A compromise was finally arranged. The electors were to be chosen in the old Common-Pleas circuits.² The result of the election was the same as if the general-ticket system prevailed. The Clintonian electors carried every district, receiving in the aggregate about fifty thousand votes; while Madison polled about twenty-six thousand votes. A notable instance of the unfair and arbitrary manner in

¹ October 24, 1812.

² *Weekly Register* (Niles), vol. iii., p. 144.

which the State legislatures then exercised their power, occurred in the State of New Jersey, where the appointment of electors was suddenly assumed just three days before the day of election. The bold character of the act may be understood when it is learned that a general-ticket law was then in force. Both parties had placed electoral tickets in the field. In many towns votes were actually cast on the day of election. The Republican minority of the New Jersey legislature drew up a powerful protest, which contributed much to the feeling of dissatisfaction, that prevailed in the country for many years afterwards, with the law that permitted such usurpation.

At this election also, the legislature of North Carolina repealed the law creating the district system, and itself exercised the power of appointment. In this case the action was defended on the ground that large numbers of men favorable to Madison had enlisted in the army and navy, and their absence might have made the State doubtful. The people of the State, however, did not approve of the action of their legislature, but, on the contrary, compelled the re-adoption of the district system.

It is of historical interest to know that in the State of Ohio, the regular Madison ticket was denominated Anti-Tammany, while the Clinton ticket bore the name of Tammany.¹ The former received 7,420, and the latter 3,301 votes.² An incident occurred in Pennsylvania deserving of mention. At the meeting of the electoral college of that State, four electors were absent. The legislature, on the first Wednesday in December, named four others in their place. It may be here remarked that these four electors were not appointed within thirty-four days pre-

¹ *The Columbian*, October 12, 1812.

² *National Intelligencer*, November 21, 1812.

ceding the day of election. The *Statesman*, a New York journal, on the 17th of December, said : " It is to be hoped some friend of the Constitution and the law will rise up in Congress, and prohibit a precedent so dangerous to the liberties of the people as the above will be, if suffered to pass unquestioned."

The words " rise up in Congress " are significant. The votes, however, were peacefully counted.

Madison received 128 votes and Clinton 89. The former carried all the Southern and Western States ; Clinton, the Eastern States, Vermont excepted. Four States voted by general ticket, nine by legislature, and five by districts.

The inauguration took place on March 4, 1813, under the most solemn circumstances. Charged with grave responsibilities, Madison entered upon his second term of office. The brilliant achievements of the navy had shed lustre upon the American name, and redeemed in part the reverses on land, but the conflict was just beginning. Armies had to be raised, clothed, and fed. Most of the banks had suspended specie payments. Along the eastern Atlantic sea-board, the war was unpopular.

The discontent in New England culminated in the "Hartford Convention."

The treaty of peace signed at Ghent, December, 24, 1814 was welcome to all parties and sections. National ideas and aims were developed by the war. The United States took her place among the leading naval powers of the world. The necessity of a protective tariff and of a system of internal improvements came prominently before the country. A national bank was chartered by Congress in April, 1816, with a capital of thirty-five millions of dollars, to continue for twenty years.¹

¹ The bill renewing this charter was vetoed by President Jackson, July 10, 1836.

During the administration of Madison, two Vice-Presidents died in office. George Clinton, at the age of 73 years, passed away on the 20th of April, 1812. William H. Crawford was then President *pro tem.* of the Senate. His term of office as Senator extended to March 4, 1813. If a new presidential term had not begun on March 4, 1813, a serious question would have arisen. Elbridge Gerry, who had presided all day over the Senate, on the 22d of November, 1814, suddenly expired the following day on his way to the Capitol, aged 70 years. John Gailard of South Carolina became President *pro tem.* of the Senate.

The eighth presidential term began on the 4th of March, 1817. On that day, James Monroe was inaugurated President, and Daniel D. Tompkins, Vice-President.

Brilliant and distinguished was the new cabinet: The younger Adams, Secretary of State; William H. Crawford, of the Treasury; John C. Calhoun, of War; and the eloquent Wirt, Attorney-General; B. W. Crowninshield, Secretary of the Navy.

On the 4th of March, 1821, Monroe and Tompkins were again inaugurated President and Vice-President of the United States.

The political extinction of Federalism as a national party is seen in the result of the votes cast in the presidential elections of 1816 and 1820. The Republican candidate received all but one vote in 1820, and would have received almost to a certainty a unanimous vote in 1816, if the electors of Massachusetts, Connecticut, and Delaware had not been chosen by the legislatures. The individual who has the doubtful honor of casting the solitary vote against Monroe was ex-Governor Plumer of New Hampshire.

It might seem that nothing of importance could be re-

lated of this "era of good feeling." The period, on the contrary, is not devoid of interest. In the congressional caucus held in March, 1816, a motion was made by Henry Clay, that "it is inexpedient to make in caucus any recommendation to the good people of the United States, of persons in the judgment of this meeting fit and suitable to fill the offices of President and Vice-President of the United States." The motion was negatived, but the action of the mover was significant. The rising West was opposed to a caucus. The proceedings in the caucus of 1820 gave, it was then thought, a final blow to this unrepblican practice. Only about fifty Congressmen met in pursuance of a call for the meeting. The members who assembled showed their just appreciation of public sentiment by resolving that they would make no nominations.

The language of the resolution only referred to the present occasion, and it will be later seen how an attempt was made to revive the practice. The small number of votes cast for electors, and the establishment of the district system in seven States, disclose the political sluggishness of the times. In several of the States the pleasing spectacle was exhibited of candidates in various districts striving for the honor of being authorized to cast a vote for Mr. Monroe. The newspapers of the day were almost silent on the subject of a presidential election.

In 1820, in Pennsylvania, in pursuance of a notice which invited "the citizens of the city and county of Philadelphia, and of the adjacent counties, who are opposed to the extension of slavery, to assemble for the purpose of agreeing upon an electoral ticket," a meeting was held and an electoral ticket was agreed upon, pledged to the support

of De Witt Clinton, who, it will be remembered, was a defeated candidate in 1812.¹

Monroe's administration ended on March 4, 1825, and completed a period of twenty-four years, during which three Virginians of the same political school occupied the presidential chair. Mighty changes had taken place throughout the world. The Holy Roman Empire had passed away in 1806, an event of peculiar interest to Americans, for the emperor was chosen by an electoral college consisting of several members.² The imperial office fell beneath the blows of Napoleon. In this period the world also witnessed the rapid and astounding military successes of Napoleon, whereby he dictated terms of peace in European capitals, and also saw him the prisoner at St. Helena. Mankind beheld with admiration the gallant struggle of the German and Spanish peoples to beat back the Corsican invader, and saw afterward displayed the ingratitude of princes in the enactment of the Karlsbad Decrees of August 6, 1819, whereby popular rights were utterly ignored. In England and Ireland the people were engaged in an almost hopeless struggle for constitutional reform. But in the Western Hemisphere a ray of hope for mankind was visible: the populations of the South and Central American countries as well as of Mexico, had thrown off the yoke of the parent countries, and established themselves as independent states.

In the United States, changes no less important were taking place. The war of 1812 had elevated our standing as a nation, and had strengthened the bonds of Union. Eight new States were admitted into the union,—four

¹ Phila. *Times*, Oct. 10, 1820. This circumstance of a political party pledged at this early day to oppose the extension of slavery has, it is believed, never been before noticed.

² Bryce's "Holy Roman Empire," p. 251.

slave and four free States. The period witnessed the rise of the slavery agitation in 1819, which resulted in the well-known Missouri compromise.¹

During Monroe's administration, it was announced as the American doctrine that "we should consider any attempt on their part [allied powers] to extend their system to any portion of this hemisphere, as dangerous to our peace and safety."² This doctrine has been faithfully observed by his successors.

The Republican party had chartered a national bank, had enacted tariff laws, and inaugurated a system of internal improvements. An "era of good feeling" reigned over the country. The old political landmarks had disappeared. All claimed to be Republicans. The Federalists of the Adams school were conspicuous in their devotion to the Republican cause.

The proceedings at the counting of the votes in 1817 and 1821 are full of instruction and warning. Questions similar in character arose concerning the meaning of the word "State." The question was novel, yet of the gravest political import. Fortunately, the result of the elections did not depend upon the rejection or acceptance of the disputed votes.

What was done in Congress on these occasions ought to be attentively studied, for opinions were given and votes recorded untinged by party bias or mercenary motives.

In the year 1817 occurred the first actual case of an objection being raised in a joint meeting against the counting of certain electoral votes. In this particular instance, the votes of Indiana were in dispute. The two Houses assembled in the hall of the House of Representatives.

¹ Benton's "Thirty Years' View," vol. i., p. 8.

² "Statesman's Manual," vol. i., p. 460.

The President of the Senate sat in the Speaker's chair. When the Indiana votes were reached, certain proceedings took place which have given rise to a mode of procedure invariably followed on such occasions.¹

John W. Taylor of New York addressed the Speaker, and objected to the reception of the Indiana votes. He was not allowed to proceed, being informed by Speaker Clay that no proposition could be considered, nor could any business not prescribed by the Constitution be performed. In accordance with this decision, a motion was made and carried that the Senate should retire. While in their respective chambers, the two Houses took into consideration the objection raised in joint meeting, and in both, resolutions were offered, affirming the right of Indiana to have her votes counted. In favor of sustaining the objection, it was argued that the electors were appointed by a territory; that the admission act was not "an idle thing"; that all the incipient acts of the territorial legislature were ineffectual until a final decision was reached by Congress. In reply, it was urged that the resolution admitting Indiana was a mere declaration. The very moment the people of Indiana, in pursuance of an act of Congress, determined to form a State constitution, the territory was transformed into a State. It was too late, they said, to "raise a question of State or no State." Indiana was represented on the floor of Congress; why should she not have a voice in the electoral college? A member from Louisiana expressed indignation at the attempt "to question the sovereignty of an independent State." The House, after considerable debate, decided to postpone indefinitely the whole question, and then informed the Senate of its "readiness to proceed in count-

¹ "Annals of Cong.," 14th Cong., p. 943, Feb. 12, 1817.

ing the votes. The two Houses again met in joint meeting, and the votes of Indiana were counted. From what happened on this occasion, we see that when an objection is raised or motion made, no debate of any kind or character whatever is tolerated in joint-meeting, but each House must debate the question in its own apartment. If the votes of Indiana were important, several intricate questions would of necessity have arisen. Can the joint meeting be temporarily dissolved only by the action of the Senate in voting to withdraw? How can the House exercise its right to suspend the proceedings if the Senate refuses to withdraw? If there were no law on the subject, what would be the effect of a disagreement between the two Houses?

Missouri, in 1820, also appointed electors while in a territorial condition. Having seen, in the case of Indiana, the danger of the want of a definite rule, regulating the disposal of disputed questions, the sixteenth Congress in 1821, provided in advance for counting the Missouri votes. Although the points at issue were not squarely met, the debates and proceedings are worthy of attention. They furnish a striking commentary upon the defects of the Constitution. The question in 1821 assumed a dangerous character. In that year, the bitter feelings aroused in the fierce struggle over the Missouri Compromise, had not passed away, being kept alive by the dispute over the final act to admit Missouri into the Union.

To count the votes would be a virtual recognition of Missouri as a State. The usual joint committee, foreseeing that some misunderstanding and perhaps serious trouble would arise during the count, brought forward, in addition to the usual resolution, a second one, governing the conduct of the two Houses in dealing with the Missouri votes.

The votes were to be counted hypothetically according to the following formula: "Were the votes of Missouri to be counted, the result would be for A. B. for President of the United States — votes; if not counted, for A. B. as President of the United States — votes; but in either event, A. B. is elected President of the United States." As was to be expected, strong opposition was made to this evasion of the question.¹ In the House, Randolph, who had led the extreme Southern opposition to the compromise of 1820, made himself especially prominent in advocating the unconditional acceptance of the Missouri votes. He indulged in the most extraordinary language, and even declared his preference for anarchy, and an interregnum rather "than to see a principle adopted, which went to the very foundation on which the presidential election rested." That part of his argument, showing the absurdity of a hypothetical count was strongly stated, and cannot be successfully controverted. The Missouri votes could not be as well defended as those of Indiana. Those who agreed with Randolph were therefore compelled to resort to technical objections. It was claimed that nothing done in anticipation could bind the two Houses in joint meeting, that it was better to throw out the votes entirely, that if Missouri were not a State in fact, she was one of right, and was kept "out of her rights by a sheer act of power." Though the opposition was mostly Southern, several distinguished Southern statesmen gave the resolutions their approval, thus recognizing the jurisdiction of the United States government over the question. Clay in defending the resolution spoke words that should sink deeply into the heart of every lover of his country. His language is as appropriate to-day as

¹ "Annals of Cong.," Feb. 4, 1821.

it was in 1821. "Suppose this resolution not adopted, the President of the Senate will proceed to open and count the votes; and would the House allow that officer, singly and alone, thus virtually to decide the question of the legality of the votes?" He then went on to say that "the votes would be lost altogether" if the two Houses disagreed. In his opinion, "there was no mode pointed out in the Constitution of settling litigated questions arising in the discharge of this subject." The remedy he suggested was an act of Congress or a constitutional amendment. Holding such views, he rightly used the phrase "*casus omissus*." In the House the resolution was carried by a sectional vote of 90 to 67. The Senate had the day before agreed to the resolutions of the joint committee, which were, however, not drawn up in the exact words of the resolutions reported to the House. In the former, the President of the Senate was to be the presiding officer of the joint meeting; in the latter, each House was to be presided over by its own officer. Thus would be recognized the separate and independent character of each House. On the 14th of February the two Houses came together. Notwithstanding the previous arrangements made in regard to the counting of the votes hypothetically, objections were offered, and the Senate immediately withdrew. What took place in the House may best be compared to the Georgia trouble in 1868.¹ A resolution was offered in the House, declaring that the votes ought to be counted. In the debate that followed, the doctrine of State rights was advocated with extreme bitterness. The House refused to sustain the resolution and ordered the count to proceed. The Senate returned, and the votes were counted. Now was witnessed a scene

¹ See p. 179.

which we hope will not be repeated in our day. As soon as the President of the Senate had performed his duty of stating hypothetically the number of votes received by the candidates, Randolph, amid great excitement, demanded a hearing. He was ruled out of order, and compelled to take his seat. When the Senate retired, he made a strong revolutionary harangue, and finally offered two resolutions agreeable to his views. The second resolution ended with these words: "Therefore the proceeding has been irregular and illegal." We may imagine the dreadful consequences that would have resulted from the adoption of such resolutions. Every well-disposed citizen must shudder at the thought that the stability of our government is liable to be threatened every four years.

John Quincy Adams, in his *Memoirs*, says :

"If the election had been a contested one, and the reception or rejection of the Missouri votes could have turned the scale, I think there would have been no declaration of a President and Vice-President before the 4th of March, and the whole Union would have been unhinged."¹

¹ "Memoirs of John Quincy Adams," vol. v., p. 278, February 14, 1821.

CHAPTER XII.

TENTH PRESIDENTIAL ELECTION.—THE SENATE BILL OF 1824.

WE now approach the famous presidential contest of 1824, which, from a constitutional standpoint, has many features in common with the election of 1800.

As in 1800, the Senate passed a bill providing for the settlement of disputed questions. As in 1800, there were witnessed the desperate efforts of some party leaders to force changes in the electoral laws, of other party leaders to keep the laws unchanged. As in 1800, the election was thrown into the House of Representatives. As in 1800 also, the period is marked by an extraordinary activity in the public mind in regard to the necessity of a new amendment, and to the taking of action upon the same by Congress: 1800 marks the rise, as 1824 the downfall, of the congressional caucus system. In the first session of the eighteenth Congress, Martin Van Buren, as chairman of the Senate Judiciary Committee, on the 4th of March, 1824, reported a bill,¹ amending the act of 1792. It was an attempt to remedy by legislation the supposed defects of the Constitution, in the matter of counting the electoral votes.

According to the bill, the power to decide upon doubtful votes lies in both Houses of Congress. The subjects

¹ "Counting Electoral Votes," printed by order of House of Representatives, Dec. 23, 1876, p. 57.

over which jurisdiction was especially given, were exclusively the constitutional provisions prescribing the time of election, the qualifications of persons, and the number of votes allowed to each State.

The mode of procedure in joint meeting was modelled in a great degree after the bill of 1800. When an exception is taken to the vote of a State, it must be stated "directly and not argumentatively," and must be signed by a Senator and a Representative. The identical words of the bill of 1800 were used in regulating what must follow the taking of an exception. Where the power resides to decide finally upon the legality of a vote or votes had been the subject of dispute which prevented an agreement between the two Houses in 1800. The bill of 1824 adopted the interpretation of the House of Representatives in 1800. No vote or votes were to be rejected without the concurrent consent of both Houses. The bill passed the Senate April 19th, but was lost in the House. Webster, as chairman of the Judiciary Committee, reported the Senate bill to the House without amendment.

We may presume that Webster considered the bill constitutional. If it is constitutional, then the claim of the President of the Senate has no foundation in fact or in law. In the bill no duty is assigned to the President of the Senate, but the Constitution gives him the unquestioned power to open the certificates in joint meeting. With this power the bill of 1824 in no way interfered. The tellers appointed by the two Houses were "to receive the certificates"—from whom? The person who opened the certificates; therefore his duty ceases when he has opened the certificates.

Congress adjourned on May 27th, and left the country

exposed to all the dangers of anarchy. The Federal party had become extinct, and the candidates for the presidency were all counted among the disciples of Jefferson. Hence the usual cry in an election, "Stand by the party," was, to say the least, inappropriate. Yet the address of the caucus to the Republicans of the United States gravely assumed that "the question is, in our best judgment, one touching the dismemberment or preservation of the party."

In exciting party conflicts, when great political principles were at stake, the nominee of a Republican caucus was generally accepted by the people. The first formidable opposition to the dictates of a caucus appeared in 1812, which, however, failed on account of a United South and the existence of a war with England.

In 1816 the friends of the Republican candidates went into the caucus and abided by the result. In 1820 no formal nominations were made. The revival of the caucus in 1824 was, therefore, regarded with disfavor. The nominations made created no enthusiasm. An outbreak was inevitable. The eloquent Clay was nominated by the legislatures of Ohio and Kentucky; the younger Adams by the legislature of Massachusetts. A fourth candidate had been presented two years previously by the legislature of Tennessee, and was supported with great enthusiasm by the people in general. This candidate was the immortal Andrew Jackson. The Jacksonians were especially active in Pennsylvania. A State convention was held at Harrisburg, on the fourth of March, 1824, for the purpose of framing an electoral ticket. One of the resolutions adopted at this meeting is of historical interest, and deserves to be rescued from the fate which usually attends resolutions of that character. Those who think that John

Quincy Adams was the last of the statesmen Presidents may possibly see in this resolution evidence of the change the structure of our government is, as they say, undergoing :

“ This artificial system of cabinet succession to the presidency is little less dangerous and anti-Republican than the hereditary monarchies of Europe. If a link in this chain of successive secretary dynasties be not broken now, then may we be fettered by it forever. Andrew Jackson comes pure, untrammelled, and unpledged from the bosom of the people.”¹

The reason of this resolution may be found in the fact that three candidates, chiefly mentioned, were members of the cabinet of Monroe. Adams was Secretary of State ; Crawford of the Treasury ; Calhoun of War ; while Clay was Speaker of the House of Representatives.

The South Carolina legislative caucus, by a majority of one, recommended Mr. Lownes as a candidate in preference to Mr. Calhoun. Lownes' answer on this occasion, “ that the presidency was an office neither to be sought nor declined,” recalls to our memory the best days of Greece and Rome.²

In consequence of the large number of candidates, an unusual commotion was raised among the people in regard to the manner of choosing electors. The reader will doubtless recollect that, although New York did not participate in the first election, the prominent men of both parties declared that to the people rightfully belonged the privilege of choosing electors. Yet the legislature ap-

¹ A toast given in the electoral college of Pennsylvania re-echoed the sentiments of the Convention : “ Pennsylvania—By her unbroken phalanx for Jackson, she broke the entailment, and Virginia's son cannot inherit.” *Evening Post*, Dec. 18, 1824.

² Benton's “ Thirty Years' View,” vol. i., p. 19.

pointed the electors in 1792, and continued so to do at the seven subsequent elections. This action savored strongly of usurpation, though no serious opposition to it had been made except in the election of 1800. The appearance of at least four candidates for the presidency as early as 1822 portended a bitter fight in New York State. How the efforts of the people of that State to regain their rights were frustrated by the desperate and defiant conduct of the "Albany Regency" needs not to be here retold. The plans of the "Regency" miscarried, however, for the State election disappointed their hopes in regard to the composition of the legislature. The intrigue which resulted in a division of the electoral vote of the State shows the evils of the law. A dispute arose as to the effect of casting three blank votes in the joint meeting. The point in dispute, though not to be discussed here, led to comments which shed light on questions hereafter to arise.

The *Evening Post* of December 2, 1824, said: "May not Congress take upon themselves to decide whether the votes of the legislature of this State have been legally given and ought to be received." But it continued, "it would be a mere waste of time," as the votes were not decisive of the general result.

From the *National Intelligencer* the following two extracts are taken, November 23, 1824:

"Being made, let not the decision be disturbed. We are known to prefer Mr. Crawford for the presidency, but we would rather even witness the defeat of his high claims than see our government shaken to its foundation by such a contest as would be occasioned by opening before Congress the question which has been in our opinion so erroneously decided in the legislature of the State of New York."

Again on November 30th :

“We had supposed that the United States at large had some small concern in the presidential election. If this be admitted, it requires no argument to prove that an error or fraud in the election of electors in any one of the States affects the whole of the States, and that every citizen of whatever State has a moral as well as a legal right to express an opinion upon it. . . . Indeed they have themselves surrendered the whole ground of their affected displeasure at us when they express an opinion that the legality of the vote of New York may be brought before Congress.”

At this election the general-ticket system prevailed in ten States, the choosing by the legislature in six States, while in the remaining eight the electors were chosen in districts. Not even in the latter did uniformity prevail. In Maine and Massachusetts, two of the electors were chosen by the people at large. In Kentucky a curious arrangement was in vogue. The State was divided into three districts: one district was to be represented by four electors, while each of the other two chose five electors.

As one of the questions before the Electoral Commission was the effect of a vote cast for and by a person holding a position of honor or trust under the United States government, liberty is here taken of quoting from the *Maine Enquirer* and the *National Intelligencer*. In the former on the 3d of Oct., 1824, the following opinion is given :

“We apprehend that every vote thrown for Judge Campbell will be lost, and as it is probable that the ticket on which his name is placed will obtain the highest number of votes, the next highest candidate on the other ticket will probably be declared chosen.”

Judge Campbell was a postmaster at the time he was a candidate for the office of elector.

In commenting upon the above opinion, the *National Intelligencer* on the 9th of Oct., 1824, remarked that "one of the Pennsylvania votes will, from the same cause, be lost to General Jackson, in which case there will be one elector chosen for Adams." As was anticipated, no one of the presidential candidates received a majority of electoral votes, and therefore the House of Representatives was a second time to become an electoral body. After the formal counting of the votes had been concluded on the 9th of Feb., 1825, the House proceeded to choose a President from the names presented: Jackson, Adams, and Crawford. The rules adopted were substantially those of 1801. The result of this electoral election is well-known.

Adams received the vote of the New England States, together with New York, Maryland, Ohio, Kentucky, Illinois, Missouri, and Louisiana, thirteen in all. Jackson was supported by New Jersey, Pennsylvania, South Carolina, Tennessee, Alabama, Mississippi, and Indiana; while Crawford obtained the votes of Delaware, Virginia, North Carolina, and Georgia.

Adams carried the House by the aid and influence of Clay, who had written a letter defining his position. Clay's reasons for not supporting Jackson are far-fetched and disclose symptoms of jealousy.¹

"As a friend of liberty and to the permanence of our institutions, I cannot consent in this early stage of their existence, by contributing to the election of a military chieftain, to give the strongest guaranty that this republic will march on the fatal road which has conducted every other republic to ruin."

¹ Clay to Hon. F. Brooke, Jan. 23, 1825.

What an unjust accusation against him who wrote these beautiful lines :

“The ambition which leads me on is an anxious desire and a fixed determination to return to the people unimpaired the sacred trust they have confided to my charge, to heal the wounds of the Constitution, and preserve it from further violation ; to persuade my countrymen, so far as I may, that it is not in a splendid government, supported by powerful monopolies and aristocratical establishments, that they will find happiness or their liberties protection ; but in a plain system void of pomp, protecting all and granting favors to none—dispensing its blessings like the dews of heaven, unseen and unfelt, save in the freshness and beauty they contribute to produce.”¹

The Sage of Monticello seems to have shared the apprehensions of Clay, for in a letter to old John Adams he declared the issue of the campaign was “whether we are, at last, to end our days under a civil or military government.”² His wish was gratified. On the 4th of July, 1826, the semi-centennial anniversary of the country’s birthday, under the mild and beneficent rule of John Quincy Adams, the two heroes of the Revolution passed away.

Mr. Adams’ reply to the committee notifying him of his election alluded to the circumstances under which he was elected, and expressed his will to decline the office and submit the question again to the people. But as he said : “The Constitution itself had not so disposed of the contingency which would arise in the event of my refusal.” John C. Calhoun had been elected Vice-President by an overwhelming electoral vote.

¹ Jackson’s Protest, “Statesman’s Manual,” vol. ii., p. 863.

² “The Writings of Thomas Jefferson,” by H. A. Washington, January 8, 1825 ; edition of 1853, vol. vii., p. 387.

CHAPTER XIII.

RISE OF THE JACKSON DEMOCRACY.—JACKSON'S HEIR.—
THE MICHIGAN TROUBLE.—ABOLITION CONVEN-
TIONS.—ELECTION AND DEATH OF HARRISON.

THE personal parties of 1824 soon disappeared, for they were founded on no permanent basis. Adams was inaugurated President on the 4th of March, 1825, and henceforth new parties were crystallizing. The selection of Henry Clay as Secretary of State aroused the strongest criticism. It was claimed that the selection was made in pursuance of an agreement previously made whereby Clay, in consideration of casting his influence on the side of Adams in the late House election, was to become a member of the cabinet. The friends of Adams and Clay joined hands, and formed the "National Republican" party. This union drove the scattered elements of the opposition to the support of General Jackson. Though a Southern man and a slaveholder, the General's popularity with the people in the Western and Middle States was very great. The congressional elections of 1826 resulted in the complete triumph of the opposition, and paved the way for the overthrow of the Adams administration.

The qualities of a party leader were not in Adams. No efforts were made to control the civil service. His views of our relations with the South and Central American republics and of the tariff and internal improvements, were in sharp contrast with the prevailing views of the

Southern leaders. On one side he was called a Federalist, while in many parts of the country outside of New England he was denounced by the surviving Federalists. The canvass of Jackson was in the hands of shrewd political leaders, who thoroughly understood the art of politics.¹ The East went for Adams and a high tariff. The West supported Jackson, because there he was personally popular. The discontent in the cotton States over the tariff and the disposition of the Indian lands was so great, that Jackson's popular vote was practically unanimous. The popular sentiment in the Middle States was evenly divided, save in Pennsylvania, where Jackson's majority was over 50,000. The electoral vote of New York was cast 20 for Jackson and 16 for Adams. The popular vote stood 140,763 for Jackson, and 135,413 for Adams. At no other presidential election has the electoral vote of that State been fairly apportioned. An explanation is easily given. The people had at a previous election, by direction of the legislature, expressed their sentiments in favor of the district system, and so that mode prevailed in 1828. The result of the count of electoral votes at the joint meeting on February 11, 1829 was as follows: For President—178 for Jackson and 83 for Adams. For Vice-President—Calhoun, 171; and Richard Rush, of Pennsylvania, 83; and 7 for Mr. Smith, of South Carolina. On the 4th of March, 1829, Jackson took the oath of office as President of the United States, and selected as members

¹ In all the States but South Carolina, electors were chosen by the people. That State adhered to the legislative system, because the lower division of the State contained twice as many slaves but less number of free population than the upper. The lower division was entrenched in the legislature. See letter of John C. Calhoun, defending the practice, Nov., 1846. "Works of John C. Calhoun," vol. vi., p. 255. D. Appleton & Co., New York, 1854.

of his cabinet: Martin Van Buren, of New York, for Secretary of State; Samuel D. Ingham, of Pennsylvania, Secretary of the Treasury; John H. Eaton, of Tennessee, Secretary of War; John Branch, of North Carolina, Secretary of the Navy; John M. Berrien, of Georgia, Attorney-General. The rupture between the President and Vice-President caused an entire reorganization of the cabinet. Edward Livingston, of Louisiana (formerly of New York) became Secretary of State; Louis McLane, of Delaware, Secretary of the Treasury; Lewis Cass, of Ohio, Secretary of War; Levi Woodbury, of New Hampshire, Secretary of the Navy; and Roger B. Taney, of Maryland, Attorney-General. Changes were again made in 1833 and 1834, in consequence of the fight with the bank. On the 28th of December, 1832, John C. Calhoun resigned the office of Vice-President to take a seat in the United States Senate. Senator Hayne, whom he succeeded, had become governor of South Carolina. The nullification troubles were then at their height. The politics of 1832 were naturally strained and unsettled. They were further complicated by the rise of the anti-masonic party, which had gathered in its ranks some of the brightest names on the pages of American history. The attitude of South Carolina lent interest to the fight. National conventions for the first time were held by the three political parties, at the city of Baltimore.

Jackson and Clay had no competitors in their respective parties. A strong effort was, however, made to persuade the National Republicans to give up Clay, and endorse the nominee of the anti-masonic party, who was the distinguished William Wirt, Attorney-General of the United States during the administrations of Monroe and Adams. In the Democratic convention of this year, held in May,

1832, the famous two-thirds rule was adopted. Van Buren, whose nomination to the Court of St. James had been rejected by the casting vote of Calhoun, received the nomination of Vice-President.

The Jackson Democracy presented a united front, and carried the elections. The third party received the vote of Vermont, and disappeared from the political arena.

Jackson received 219 electoral votes, Clay 49, Floyd, of Virginia, 11, and Wirt 7. For Vice-President, 189 votes were cast for Van Buren, 49 for John Sargeant, of Pennsylvania, 30 for Wilkins, of Pennsylvania, and 7 for Amos Ellmaker, of Pennsylvania, and 11 for Henry Lee, of Massachusetts. The 11 votes of South Carolina were cast for Floyd and Lee. Jackson's eight years of administration forms a most important and interesting epoch in our history. The foreign policy of the government was both spirited and successful. Commercial treaties were negotiated, and long-standing complaints of American citizens were satisfactorily adjusted.

The financial system of the government was revolutionized. The bank veto of July 10, 1832, immediately preceding the presidential election of that year, was a death-blow to monopoly in banking, and despite the temporary embarrassments that grew out of the veto, and the unfriendliness of the Executive to the bank, has proved to have been a wise and brave act. The slavery question took a fresh start at this time. Abolition and anti-slavery societies were formed. The South took alarm and offence. The right of petition, and the inviolability of the mails, were involved in the suppression of the agitation.

The enactment and enforcement of tariff laws were the all-absorbing questions of that time. Not only the welfare of the sections, but the supremacy of the government

were involved. The tariff act of 1824, the appointment by the legislature of South Carolina, of a committee to investigate the powers of the general government, the convention of high-tariff men at Harrisburg in 1828, the tariff act of 1828 and its denouncement by the legislatures of South Carolina, Georgia, Virginia, and Alabama, the Webster-Hayne debate in the Senate; all these culminated in the South Carolina State Convention of November 24, 1832, wherein it was, among other things, declared that the late tariff acts were "null, void, and no law nor binding upon the State, its officers or citizens," and that "we will not submit to the application of force," and that "if such is used," the people of that State "will thenceforth hold themselves absolved from all further obligation to maintain or preserve their political connection with the people of the other States, and will forthwith proceed to organize a separate government, and do all other acts and things which sovereign and independent States may of right do."¹

A crisis was reached. An executive of iron will and unquestioned nationalism was needed. The hero of New Orleans took his stand, and made his name immortal.

The proclamation of Dec. 10, 1832 was a beacon light in the sea of politics, and its influence was felt long after the event which occasioned it.

Van Buren retained his hold on the Democracy of the country, and became its standard-bearer in 1836. The nominee for Vice-President was Colonel Richard M. Johnson, against the protest of the Virginia delegates to the national Democratic convention, held at Baltimore on the 20th of May, 1836. The Whigs held no national convention, but in the various States adopted General

¹ "Statesman's Manual," vol. ii., page 794.

Harrison of Ohio for President, and Francis Granger for Vice-President, who had been nominated in a New York Whig Convention at Albany, on the 3d of Feb., 1836. In Massachusetts, however, the legislature proposed Webster. A wing of the Democratic party proposed Hugh L. White and John Tyler as candidates. This latter fact added to the division of the New York City Democrats, increased the concern of the people in the contest. It was generally believed that the ultimate choice would be made by the House of Representatives.

Arkansas entered the Union in June, 1836, and was certain to support Van Buren. The people of Michigan, while in a territorial condition, chose electors favorable to the Democracy. Including Michigan, twenty-six, twice the number of the original States, participated in the election. Reports were circulated that certain electors held positions under the United States government at the time of their appointment.

The second session of the Twenty-fourth Congress met on the 5th of December, 1836. On the 27th of January, 1837, the usual joint committee to count the votes received for the first time, instruction "to inquire into the expediency of ascertaining whether any votes were given at the late election 'contrary to law,' and what ought to be done with them." The committee made its investigations in a half-hearted manner. They reported that persons, bearing the same names as the suspected electors, held government offices, but did not pursue the inquiry. They agreed that "a single illegal vote would not vitiate the whole electoral vote of the college of electors in which it was given, particularly in cases where the vote of the whole college has been given for the same persons,"¹ and that "the dis-

¹ Same construction by Committee of House of Representatives, January 22, 1801.

qualification relates to the time of the appointments ; and that the resignation of the office of deputy-postmaster, after his appointment as elector, would not entitle him to vote as elector under the Constitution." In the supposed case of a contest over such a vote, the committee asked : "What tribunal would, under the Constitution, be competent to decide? Whether the respective colleges of electors in the different States should decide upon the qualifications of their own members, or whether Congress should exercise the power, is a question which the committee are of opinion ought to be settled by a permanent provision on the subject." But no permanent provision on the subject was then made. The Oregon case of 1876 presented a like state of facts.¹ Another difficult question confronted the committee in devising a mode of counting the votes of Michigan.

It seems that the people of Michigan had applied to Congress for permission to hold a convention and prepare for admission into the Union, and had been refused. The electors were chosen in November, 1836, but the Act of Congress admitting Michigan as a State, did not become law until January 27, 1837. Fortunately the votes were not essential to the result, and no strong opposition was offered to the alternative counting of the Michigan votes. The wording of the resolution in regard to the function of the President of the Senate, is an evidence of the harmony that prevailed between the two Houses. During the debate upon the adoption of the resolutions, the two Senators and the one Representative from Michigan contented themselves with protesting against the proposed action of Congress. "The votes of Indiana were counted, why not those of Michigan," they argued. The duty of defending

¹ See pp. 203, 227.

the resolution was performed by Senator Grundy, of Tennessee, who used the following sad but prophetic language: "when Senators recollected that this was the very place where the rock lies which may destroy this government, they would perceive that the committee had good reasons for recommending the resolution objected to." Replying to the question "what would the committee have recommended in case the votes of Michigan had varied the result?" he said: "what might be done under the circumstances adverted to by the Senators from Michigan, should they *ever* occur, the *wisdom* of the day must decide." If the supposed contingency had arisen in 1837, it is not unnatural to suppose that those favoring the counting of the Michigan votes would not have yielded.

The intense party spirit aroused by Jackson's struggle with the bank, would have made a peaceful settlement almost impossible.

Michigan was represented in both branches of the national legislature by men who were chosen before she became a State.

An opinion such as is given in McCrary's "American Law of Elections," with regard to members of Congress chosen by a territory, might have been, without much difficulty, made to apply to presidential electors.¹

Those who would declare that the electors had performed their duty while Michigan was a territory, might be answered that when the persons chosen by the electors would enter upon that office, Michigan would be a State.

The recommendations of the committee were concurred in by both Houses. The ceremony of the count

¹ "Treatise on the American Law of Elections," by George W. McCrary, edit., 1875, paragraph 172.

took place on Wednesday, Feb. 8th. Hon. William R. King, of Alabama, was the President of the Senate. He distinctly announced to the two Houses that they were now convened for the purpose of counting the electoral votes. Van Buren received 167 votes (not including Michigan), Harrison 73 votes, Mangum 11, Hugh L. White 26, and Webster 14. South Carolina, Georgia, and Tennessee failed to support Van Buren, but threw away their votes on Mangum and White. The result announced by the tellers disclosed Van Buren's election without the aid of Michigan's vote, but for the first and only time in our history no candidate for the vice-presidency had received the requisite constitutional number of votes. The Democratic candidate, Richard M. Johnson, received 144 votes, not including Michigan, the Whig candidate, Granger, 77 votes, the extreme State-rights candidate, John Tyler, secured the support of South Carolina, Georgia, Tennessee, and Maryland, casting 47 votes. The Virginia Democrats had carried into effect their threat in the national convention by withholding 23 votes from Johnson. The latter could not spare these votes, for he lacked one of a majority. Upon the Senate, therefore, devolved the duty of selecting a Vice-President. Johnson and Granger were the names presented. The power and influence of Jackson were now signally shown. Forty-nine out of fifty-two Senators were present. Johnson received 33 votes and Granger only 16. The South Carolina Senators took no part in the proceeding. Johnson was thereupon declared Vice-President of the United States.

The inauguration of Martin Van Buren, on Saturday, the 4th of March, 1837, marks the progress of events. The familiar face of Chief-Justice Marshall was missing,¹

¹ Died July 6, 1835.

he who had administered the oath of office to every president since 1800. Marshall presided over the Supreme Court thirty-four years; his successor was Roger B. Taney, who adorned the bench for twenty-eight years. Nearly all the cabinet were retained. Jackson was present at the inaugural ceremonies, and two days later started for his old home in Tennessee. The storm that had been gathering now burst upon the country. A financial panic came, sweeping away countless fortunes. Banks suspended specie payments, bankruptcy stared every one in the face. Van Buren boldly carried out the policy of Jackson. The divorce of State from bank was assured by the establishment of the independent sub-treasury scheme. The Canadian troubles and the Florida war added to the embarrassments of the administration. Van Buren sought a renomination as a vindication of his measures. In the city of Baltimore, on the 5th of May, 1840, the Democratic national convention unanimously tendered him the nomination of President, but presented no name for Vice-President. The platform opposed a general system of internal improvements, the principles of a protective tariff, the chartering of a national bank, and the proscription of foreigners, and all agitation of the slavery question.

The Whig convention had previously met with high hopes at Harrisburg on the 4th of December, 1839. The whole policy of Van Buren's administration was at issue. The unsettled financial condition of the country made victory possible for the Whigs. General William H. Harrison, of Ohio, the defeated candidate in 1836, was nominated on the twenty-fourth ballot for President. Unfortunately for the Whig party, John Tyler, a temporary Calhoun convert, was named for Vice-President. No

platform was adopted. The Abolition convention, held at Albany on the 1st of April, 1840, deserves a passing notice. It had been summoned to consider the question of an independent nomination of Abolition candidates for the two highest offices in our national government, and if advisable to make such nominations for the friends of freedom to support at the next election.

Its members were mostly from the State of New York. A motion to nominate a candidate for the presidency was barely carried. James G. Birney, of Kentucky, and Thomas Earle were nominated. The canvass was most exciting. The popular manifestations were very pronounced. Van Buren lost his own State by a large majority, while in Pennsylvania he ran only 345 behind Harrison in a total vote of 288,040. The thirty electoral votes of the State were cast, nevertheless, as a unit for Harrison. The latter's victory was complete. All the States but six fell into the Whig column.¹ The Abolition vote was 7,059 out of 2,401,778. The New England States cast nearly 2,500, New York alone nearly 2,800. The vote, though light, was ominous. Harrison was inaugurated on the 4th of March, 1841, under the most auspicious circumstances. The people were assembled in larger numbers than ever before. The civic and military procession on this occasion was long remembered. The Whig party was now installed in power. Daniel Webster was called to the State Department; Thomas Ewing of Ohio, to the Treasury; John Bell of Tennessee, to the War Department; George E. Badger of North Carolina, to the Navy; Francis Granger of New York, Postmaster-general;

¹ Popular vote, Harrison, 1,275,017, Van Buren, 1,128,702.—Spofford's "Amer. Almanac," 1880. A cry of fraud was raised, but no action was taken.—"Thirty Years' View," vol. ii., p. 327.

John J. Crittenden of Kentucky, Attorney-General. It was a strong cabinet. On the 4th of April, a month later, General Harrison died. The members of the cabinet united, in a despatch to Vice-President Tyler, informing him of the sad event. On the 6th Tyler arrived in Washington and took the following oath :

“I do solemnly swear that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.”

JOHN TYLER.

“April 6, 1841.”

Accompanying the oath is the certificate of Chief Judge Cranch :

DISTRICT OF COLUMBIA. }
City and County of Washington. } ss.:

“I, William Cranch, Chief Judge of the Circuit Court of the District of Columbia, certify that the above-named John Tyler, personally appeared before me this day, and although he deems himself qualified to perform the duties and exercise the powers and office of President, on the death of William Henry Harrison, late President of the United States, without any other oath than that which he has taken as Vice-President, yet, as doubts may arise, and for greater caution, took and subscribed the foregoing oath before me.”

W. CRANCH.

“April 6, 1841.”

The Hon Samuel L. Southard of New Jersey had been chosen a few weeks before President *pro. tem.* of the Senate, but there was no Speaker of the House.

On the 11th day of September, 1841, the Whig cabinet resigned, Webster alone excepted. The Whig prospects were dashed to the ground. The story of Whig crimination and recrimination has no place here. It was a most unfortunate circumstance for the country.

CHAPTER XIV.

THE FIFTEENTH AND SIXTEENTH PRESIDENTIAL ELECTIONS.—THE SPECTRE OF SLAVERY.—FREE-SOIL CONVENTIONS.—THE MEXICAN WAR.

THE years 1831–1836 may be justly considered as the starting-point of another stage in the slavery question. From that time date the publication of an abolition newspaper in the United States,¹ and the delivery by Mr. Calhoun of that series of speeches touching slavery, wherein he continually changed his views on the power of Congress over slavery in the territories, and at last delivered his opinion that no power existed in or out of Congress to prevent the introduction of slaves into the territories. From that period began in the halls of our national legislature the discussion of two great and important questions: one, the bulwark of free government; the other, involving the peace of the country, the right of petition, and the forcible annexation of Texas.

Abolitionism, whose advocates claimed the right of petition, never had a strong hold on the masses, not even in New England. The checkered career of William Lloyd Garrison is a sufficient illustration of this statement. Yet in the course of a few years, he and his followers did raise a storm of agitation.

Alone, poor, and almost unsupported, he began the fight at a time when conduct such as his was considered that of

¹ *The Liberator*.

a demagogue. Mobbing was considered only too good for him. His followers were looked upon as "misguided men" pursuing "mad speculations." Tracts, pamphlets, and newspapers were scattered over the South, spreading discontent among the negroes, exasperating the slaveholders, and inculcating into the minds of a new generation, a line of action condemned by the greatest of our statesmen. Holding such views, they possessed but little influence with the American people, even during the latter days of slavery, as was seen in the birth and growth of the Republican party, which as late as 1861 favored non-interference in the old States. A reliable authority, the late Henry Wilson, says that the members of the abolition societies constituted only a small fraction of the supporters of Abraham Lincoln, who once said that "the promulgation of abolition doctrines" tends to increase the evils of slavery.

One of the leading political problems before the country related to the solution of the Texas annexation question. The Texas trouble was essentially one of long standing. Our claim to that country goes back to the times of Jefferson; for many jurists considered Texas included in the Louisiana purchase, but we lost all right to it by our action on several occasions.

After Texas had thrown off the yoke of Mexico, the population of the former was increased by a still larger number of American citizens who naturally joined in the cry for a union with the American republic, and thus aided the Annexationists in the United States. In this country the movement was purely Southern. Loud were the pretensions of the Southern leaders in behalf of the neighboring republic. The sympathies of the whole American people were enlisted by tales of suffering and

cruelty. The Texans sprang from the same lineage, spoke the same language and were now fighting in the glorious cause of liberty and independence.

The administration of Tyler under the influence of Calhoun, exerted its whole power in furthering the forcible annexation of Texas. Then followed the national conventions of 1844. They were both held in Baltimore in the month of May. The Whigs nominated Clay and Frelinghuysen, and maintained a silence on the annexation question, while the Democracy demanded "the re-annexation of Texas" as a "great American measure." The Democratic party was now in evil times. The veteran statesman, Van Buren, was set aside because he did not unequivocally favor the scheme. States that could give no electoral votes to the Democratic ticket, voted against Van Buren in the convention. The Jackson Democracy received a hard blow. The country was deceived. James K. Polk, of Tennessee, a supposed friend of Jackson, received the nomination. The vice-presidency was immediately offered to Silas Wright, the warm friend of Van Buren, and as instantly declined. George M. Dallas, of Pennsylvania, then received the nomination. Matters now looked serious. Many New York Democrats agreed to support the ticket, but at the same time, to vote for Congressmen who were sound on the annexation question. The prospects of a Whig victory were excellent. The long-wished for prize was now within the reach of Henry Clay, when appeared his Alabama letters, wherein he alienated the anti-slavery Whigs of the North, without gaining a single vote. The Whig party was paralyzed. In connection with this, it may be stated that in the month of August, 1843, a convention of nearly one thousand delegates, composing the liberty or Abolition party, met

at Buffalo. James G. Birney was again placed in nomination, and Thomas Morris, of Ohio, for Vice-President. The treasonable and disloyal sentiments of the party are disclosed in the resolutions "to regard and treat the third clause of the Constitution whenever applied to the case of a fugitive slave, as utterly null and void; and consequently, as forming no part of the Constitution of the United States, whenever we are called upon or sworn to support it."

The brilliant canvass of Clay was in vain. The States of New York and Michigan were carried by Polk by pluralities only; 15,812 in New York, and 3,632 in Michigan were thrown away on Birney, thus ensuring the election of Polk.¹ Another element contributed to Clay's defeat. An unfriendliness was, at this time, exhibited in many quarters toward the foreign element in the United States. It was the year of the native American agitation. The Democracy had spoken in bold and brave language in favor of extending to all adopted citizens the same rights and privileges which are enjoyed by natives. The Whigs hesitated, not as regards their treatment of the foreigner, for whom they had no kind word, but as to the advisability of publicly catering for the native vote. Clay received the native American vote in the Northern States, and the Whig newspapers during and after the canvass spoke bitterly against the foreign vote, which was undoubtedly cast against him. The election of 1844 was carried by the war party.² Polk and Dallas received 170 electoral votes, and

¹ Spofford's "American Almanac," 1880, p. 269.

² In the State of Louisiana a most glaring and barefaced fraud was committed whereby the Polk electoral ticket was chosen. In the county of Plaquemines there were returned for Polk 1,239 votes, and only 44 for Clay. The highest vote ever polled for all candidates from 1840 to 1852 was 537. The population of the county in 1840 was 671 white men.

Clay and Frelinghuysen 105. Polk's cabinet consisted of James Buchanan as Secretary of State, Robert J. Walker as Secretary of the Treasury, William L. Marcy as Secretary of War, George Bancroft as Secretary of the Navy, Cave Johnson, of Kentucky, Postmaster-General, and John Y. Mason as Attorney-General.

On May 13, 1846, war was proclaimed with Mexico, was vigorously prosecuted and finally resulted in the dictation of the terms of peace at Guadalupe Hidalgo.¹ The national domain was wonderfully increased. California, New Mexico, Arizona, and Colorado became part of the United States. Texas became such, March 1, 1845. In the South, agitation had taken the shape of attempts to increase the national domain on the Southern border. The object aimed at was the increase of slave area. There was necessarily a counter Northern movement, whose purpose would be the restriction of slave area. The Wilmot proviso was the rallying cry of the Free-soilers. Introduced in the House of Representatives by a Democratic member from Pennsylvania, it at first received the almost unanimous support of Northern men in the House.

The proviso had found most favor in the Eastern States, where were now appearing public men, whose views on slavery were in a marked degree, far ahead of the older branch of New England statesmen. In union with these protests, came from other portions of the country, the indignant protests of bold, brave, and generous hearts against the building up, by the aid of the general government, of an institution which was looked upon by the early fathers as only to be tolerated in the original States.

In the South, on the contrary, it helped to solidify the slavery ranks, and make it more difficult to send to Congress from that section, men of conservative views.

¹ February 2, 1848.

It proved a welcome weapon to the fire-eaters, and only tended to irritate the Southern people, while the object aimed at might have been obtained by means less obnoxious. Its advocates well knew that no chance existed of its becoming a law in the present personnel of the Senate, and that its continued discussion would create dissensions in the anti-slavery ranks. At that time no one dared to propose the repeal of the Missouri line, and the principles of the bill were applicable only to the Mexican territories. Moreover all fears as to the contest between freedom and slavery were dispelled by the existence of the local laws, to repeal which, would require a direct vote by Congress.

The people cannot be expected to go into the niceties of the law. How easy to persuade the people of their rights under the ægis of the Constitution to carry their "property" into the new territories. Exclusion of their "property" was in their eyes a stigma of inferiority.

Why not carry their slave as well as a horse or plow? Such sophistries became current among the entire population of the cotton States.

The elections of the last few years had turned greatly on that question, as the Wilmot proviso, they said, had driven a thorn into their side. It is enough to say that the elections of '44, '46, '48 sent to Congress men completely imbued with the fell spirit of disunion.

The Wilmot proviso, technically, was not before the country in 1844, yet the men were elected in the South, who demanded the right to carry slaves into the territories. Their names are familiar, Jefferson Davis, James M. Mason, Robert Toombs, John Slidell, Howell Cobb, Yulee, Iverson, Soule. Many in the South firmly believed that the opposition in the North was pure fanaticism, while thousands in the North were firmly convinced that avarice,

ambition, and interest were the main props of slavery. It has been often remarked that in the majority of cases, men do not reason, but madly rush to that side where their material interests lie, or traditions cluster. History hardly furnishes an instance of a body of men pausing to think whether a cry or theory is right when their interest or their pride is aroused. The idea of property in man to be held sacred in the territories was supported by Mr. Calhoun mainly through necessity. It naturally became a part of the Southern political school, and was accepted by the great mass of the voting population, more through a heated imagination, than from any real devotion to the principle.

The high hopes of many were dashed to the ground. A general, who had led the American troops through a wilderness, who had fought and won many battles against countless odds, was nominated for President by the party, which had opposed all the political measures of the war, and was elected. The cause of this political phenomenon is found in the free-soil movement of 1848. The credit of this movement should be given to the old Jacksonian Democracy. Perhaps it may be said that the movement was the result of selfishness and disappointment.

Naturally if Van Buren had been nominated in 1844, if Silas Wright had not been ill-treated by the administration of Polk, if the Van Buren, or as they were called, the "barn-burners'" delegation had been admitted into the convention of 1848, with full privileges, there would certainly have been no substantial anti-slavery demonstration in the State of New York. At first glance, this charge against the Free-soilers appears plausible, but it can be met by the answer that the very ground on which Van Buren failed of a re-nomination was his opposition to the annexation of Texas.

The meaning of which opposition was an aversion to an increase of slave territory.

All previous anti-slavery demonstrations were insignificant in contrast with that of 1848. In that year the movement, especially in the State of New York, was led and controlled by the most astute and experienced politicians of that day, the remnant of the famous "Albany Regency." No religious sentimentality was employed.

On the 9th of August, 1848, there assembled in a convention at Buffalo, delegates from nearly all the free States, and also from Virginia, Delaware, and Maryland. The convention was purely sectional in its composition, and therefore subject to censure. The leading candidates for the presidential nomination were Martin Van Buren and John P. Hale. The former received the highest vote, and was declared the nominee. Charles Francis Adams was supported for Vice-President. Salmon P. Chase was chairman of the convention. Benjamin F. Butler, of New York, a distinguished lawyer, who had presented Van Buren's name to the Democratic convention of 1844, submitted sixteen resolutions, as expressive of the sentiments of the convention. Among them we find the following:

"We accept the issue which the slave power has forced upon us, and to their demand for more slave States, and more slave territories, our calm but final answer is, no more slave States, no more slave territory."

"We inscribe on our banner, Free Soil, Free Speech, Free Labor, and Free Men, and under it will fight on, and fight ever, until a triumphant victory shall reward our exertions."

To understand the full import of these declarations, it must always be borne in mind that during the previous years, a settled purpose had been developed to strengthen

the peculiar institution by the acquisition of territory on the Southern border. No reference is here made to the Louisiana and Florida purchase, but to the annexation of Texas and the treaty of Guadalupe, Hidalgo. The result of the election verified the predictions of all. The Democratic candidate, Lewis Cass, could not succeed without the State of New York, and in that State Van Buren received a greater number of votes than Cass, the regular nominee.

But the Whig nominee, General Taylor, carried the State by a plurality. The Democratic party was not supported by the entire South. The slave-holding States, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, North Carolina, and Tennessee, possessing sixty-six electoral votes supported the Whig candidate. While the Western States, Illinois, Indiana, Iowa, Michigan, Ohio, and Wisconsin, having fifty-four electoral votes, supported Cass. An analysis of the popular vote of the Western States discloses the injustice of the general-ticket system. In not one of them did Cass obtain a majority of votes, yet the votes of his two opponents were added to his votes, and all counted for him. The free-soil movement injured Taylor in those same States.

CHAPTER XV.

COMPROMISE BILLS OF 1850 AND THE SEVENTEENTH PRESIDENTIAL ELECTION.

ON Monday, March 5, 1849, Taylor was inaugurated President. A Whig cabinet was constructed—John M. Clayton, Secretary of State; William M. Meredith, Secretary of Treasury; George W. Crawford, of War; William B. Preston, of the Navy; Thomas Ewing, of the Interior¹; Jacob Collamer, Postmaster-General; and Reverdy Johnson, Attorney-General.

All eyes were turned to the opening session of the Thirty-first Congress.² Vast tracts of land were ready to receive forms of government, demands were being made for a more efficient fugitive-slave law, and the spectacle had lately been presented of eleven Senators from slave States advocating disunion, and of several free-State Senators opposing the passage of any kind of fugitive-slave law. Such were the leading problems to be considered. The whole machinery of disunion was being put in motion. The idea of a convention, composed exclusively of members from slave States, was urged and advocated. Then followed the Southern manifesto, signed by many who were afterwards the leading movers in the outbreak of 1861. A new era in the history of slavery had begun in the Southern States. Newspapers fanned the public excitement. Politicians, high in national and State

¹ A new cabinet office, created March 3, 1849.

² Dec. 3, 1849.

offices, were heard to utter disunion sentiments. Those who had become members of the Whig party from principle, or through hostility to Jackson, found their position unstable and untenable. Old and conservative members no longer obtained a hearing. Throughout the cotton States, none dared to question the morality or justice of slavery. A terrorism of thought was gradually encircling the press and the individual.

In the organization of the House, neither of the caucus nominees for Speaker received the full party vote. At the end of eighteen days, and on the sixty-third ballot, the plurality vote was adopted. Howell Cobb, of Georgia, was chosen Speaker.¹ On the 23d of December the message of General Taylor was received. It contained no "palliatives" for the South, as Calhoun would say, and no recommendations which would arouse and divide the North. The Thirty-first Congress contained a list of names, representatives of every shade of belief in the old and new schools, in their treatment of the slavery question. With the exception of Calhoun, those who had grown up during the time of Madison, Monroe, Adams, and Jackson held conservative views on the slavery question. While they were in the full meridian of their power and greatness, there came to Congress during the Mexican trouble new men imbued with different principles, who at a later period of our history were the recognized leaders, and whether for good or for evil, have stamped the impress of their views upon the States which they represented. Scattered through the list were the names of many classed as Whigs, but who were not in fact so. The Whig member from Georgia did not, as formerly, consult with the Whig member from New York. Free-soil

¹ Benton's "Thirty Years' View," vol. ii., p. 740.

Democrats were found ready to act in concert with their late political opponents.

In this Congress was undertaken the laudable but herculean task "to settle and adjust amicably all existing questions of controversy arising out of the institution of slavery, upon a fair, equitable, and just basis." On the morning of the 29th of January, 1850, the famous resolutions, that were embodied in the Compromise bills of 1850, were introduced by Mr. Clay.

The attention of the whole American people was now centred upon the proceedings in Congress. It was to be the intellectual battle-ground of the forces of freedom and slavery. There were gathered the greatest statesmen of the land. Let us hear what Calhoun has to say.

On the 4th of March was read his last speech on the slavery trouble. It had been studied and well prepared, and, from a Southern point of view, covered the whole ground. Having answered the question "what cannot save the Union," he proceeded to discuss the most important question ever agitated in this country: "How can the Union be saved?" The answer given is worthy of him whose style of reasoning was well called by Jackson "metaphysical subtlety in search of an impracticable theory." The ultimatum was presented "The restoration of the equilibrium between the sections, or disunion and secession."

A few days later was delivered, by Daniel Webster, the now celebrated 7th of March speech. No speech ever delivered by him provoked so much criticism. He has been charged with inconsistency in departing from his former views on the political treatment of slavery. The general tone of his speech in 1850 differed from that of 1848, but we must recollect the changed condition of the country.

In 1861, when the government was confronted by armed rebellion, the personal liberty laws of several New England States were repealed at the suggestion of the Anti-Slavery party.¹ The resolutions reported by the committee of thirteen experienced strong opposition. Great delay occurred in the final passage of the bills recommended. Just at this conjuncture the nation lost its chief magistrate. President Taylor died on the 9th of July, 1850. A rumor had spread that he did not favor the compromise measures as a whole. His death, though publicly spoken of as a great calamity, was looked upon by many as providential, in removing one of the obstacles to a general so-called pacification.

On July 10th Vice-president Fillmore took the oath of office as President of the United States, which was administered by the same judge who swore Tyler in nine years before. The entire cabinet was reconstituted. During the month of August all the bills received the assent of the Senate, and shortly after passed the House. Months of uncertainty had preceded the final passage of the bills. Party lines had been forgotten in the strife of section. In the Eastern States and in many scattered portions of the country the statesmen, reared in the old school, which considered slavery a subject to be treated in a delicate manner, were met with a universal and overwhelming opposition to slavery compromises.

New England churches rang with denunciations of all compromise. Each day found this new element stronger. The press was used to spread its principles, and, wherever these principles found advocates, politicians were not wanting to embody them in party platforms. A large and enthusiastic meeting was held in Faneuil Hall, and

¹ Raymond's "Life of Lincoln," p. 129.

addressed by men prominent in church and legal circles, who advocated a separation of the States, if possible "by peaceful and bloodless" means. That part of the "compromise" relating to runaway slaves, powerfully contributed to arouse an unusually anti-slavery feeling. Nothing in the past history of the country can be compared to it. Having become law, it met with a sullen and determined opposition in many of the free States. To the North, it seemed galling and humiliating.

Thousands, formerly in favor of a simple amendment of the old law of 1793, were now found its earnest opponents; while to the South, it brought nothing but disappointment. In this case, dissatisfaction came from the free States, and took the shape of popular indignation. The admission of California, Sept. 9, 1850, with a free constitution, occasioned the protest of ten slave State Senators, wherein is found the declaration that the action of Congress was "destructive of the safety and liberties of the Southern people, and fatal to the peace and equality of the States" in the South, and "must lead, if persisted in, to the dissolution of that confederacy" in which the slave-holding States have never sought more than equality, and in which they will not be content to remain with less."¹ Here was another part of the compromise opposed.

The speeches delivered at this session were filled with opinions which were afterwards formulated into principles, and embodied into the platforms of the political parties of '60. Could the "compromise" conciliate and reconcile these various conflicting theories? We have here advanced the claim, upheld in '60, by the John C. Breckinridge party. Hear the words of their great leader, John

¹ Benton's "Thirty Years' View," vol. ii., p. 769.

C. Calhoun : " The South asks for simple justice, and less, she ought not to take ; she has no compromise to offer but the Constitution, and no concession or surrender to make " ; and again he says : " You might as well treat a cancer, that is about to strike a vital part, with palliatives, as to treat this question with palliatives." Once before, in 1847, he expressed a similar opinion : " Let us be done with compromises, let us go back and stand upon the Constitution."

We will now examine the speeches of those who were known to entertain opinions, directly antagonistic both in theory and in fact to those of the Southern leaders. How boldly and fearlessly were these words, uttered by that Statesman, William H. Seward :

" I feel that slavery must give way to the salutary instructions of economy, and to the ripening influences of humanity, that emancipation is inevitable, and is near, that all measures which fortify slavery or extend it, tend to the consummation of violence. All that check its extension, and abate its strength, tend to its peaceful extirpation.

" But I will adopt none but lawful, constitutional, and peaceful means to secure even that end. And none such can I or will I forego."

In these views he was supported, at least, theoretically, by several free-soil members. I mean not to say that abolition was aimed at by them, but they wished to put themselves on record against the sinfulness of slavery and in favor of its restriction to the old slave States. Time alone would decide the further remedy. On the repeal of the compromise of 1820, the new party that sprang into existence adopted substantially the leading principles proclaimed by the restrictionists of 1850.

The third party, under the head of Stephen A. Douglas,

in 1860, held what was called by its friends the principles of "popular sovereignty," but by its opponents was nicknamed "squatter sovereignty." We must expect to find men holding views similar to this doctrine, or at least that can be construed into a recognition or justification of such action.

Lewis Cass said :

"The Wilmot proviso is dead. It is the latest, and I hope it is the last attempt that will be made to interfere with the right of self-government within the limits of this Republic. The true doctrine of non-interference leaves the whole question to the people, and does not divide their right of decision by a parallel of latitude. If they choose to have slavery north of that line they can have it."

The important question of the status of the territories of New Mexico and Utah was left undecided by the acts organizing those territories. The "Wilmot proviso" was rejected. The reasons of its rejection widely differed. In the course of a few years will be witnessed the violation of a sacred compromise in pretended observance of the precedent here set.

The result flowing from the compromise was the disappearance in the South of Whiggism as a political party, with distinct and consistent aims. The semblance of political organization was kept for a time, until the nomination of General Scott completely broke it down. We find appearing in the South two principles competing for mastery; one, a movement purely sectional in its aims, namely: a scheme for a convention wherein would be arranged a consolidated Southern sentiment, which would eventually drive from political power all conservative Southern men. The most monstrous propositions were

advocated, most impracticable guaranties were demanded. The other movement in the South, professing attachment to the Federal Union of the States, was willing to abide by the compromises of 1850 if kept in good faith. It was a sad outlook when a large section of the country practically threw off allegiance to the old parties, and professed no opinions but those relating to the institution of slavery and the expediency of disunion.

How about the North? Were parties as strong as before? How did Whiggism fare here? In a word, the Whig party may be said to have been shattered. Its usefulness was gone forever. A united Whig support could not be given to the compromises. In many States a section of the Whigs, who called themselves "Silver Grays," was formed. It was really an administration party devoted to the support of the compromise. The other section was the radical or conscience Whigs, who, knowing not exactly what to do, were watching some favorable opportunity to unite with other organizations. The Democratic party was temporarily benefited by the changed condition of affairs. In the South, on the breaking up of the Whig party, it gained an ascendancy in nearly every State. In New York the great body of free-soilers returned to the party. In the Western States its power was still preserved. In the Northern Whig States disaffection prevailed among the Whig leaders to such an extent as to render possible a Democratic victory.

The idea of a Union party to be formed out of the conservative elements of all sections, was receiving definite form about this period. The speeches of Webster, subsequent to 1850, sounded the key-note of the new party.

Such was the state of the country in the spring of 1852. In the month of June, at the city of Baltimore were held,

for the last time, conventions of the Whigs and Democrats, on the old party lines. Availability was the leading qualification of a candidate. General Winfield Scott of Virginia and William A. Graham of North Carolina were the Whig nominees.

The Democracy presented as its candidates, Franklin Pierce of New Hampshire, and William R. King of Alabama. Both parties ratified the compromise measures of 1850, and in the language of the Whig platform: "We deprecate all further agitation of the question thus settled as dangerous to our peace, and will discountenance all efforts to continue or renew such agitation whenever, wherever, or however the attempt may be made; and will maintain this system as essential to the nationality of the Whig party of the Union." The Democracy promised "to resist all attempts at renewing in Congress or out of it, the agitation of the slavery question, under whatever shape or color the attempt may be made."

The third party met at Pittsburgh, on August 11th, and nominated John P. Hale, of New Hampshire, and George W. Julian of Indiana. The compromise measures were denounced as inconsistent with the principles and maxims of Democracy. The usual resolutions concerning the sectionalism of slavery were adopted, and the influence of the government to be exerted on the side of freedom.

On July 3, 1852, the doom of the Whig party was finally sealed. The Southern Whig members of Congress drew up a paper stating reasons for not supporting the Whig candidates. In the state of public feeling, then prevailing, Whiggism could not on the "stump" claim nationalism; while the Democracy, by its strength in nearly all the States was supposed to be a national union party. The two giants of the Whig party had just

passed away—Clay in June and Webster in October. Seward rejected the platform, but supported the nominee.

Under such circumstances a Democratic victory was inevitable. Scott carried only two Northern and two Southern States—Massachusetts and Vermont, Kentucky and Tennessee. The popular vote cast for Hale only reached 156,149 out of 3,144,201. Yet Taylor lost Connecticut, Delaware, and Ohio in consequence.

In Ohio, over thirty thousand votes were cast for Hale, and more than twenty-five thousand each were cast by Massachusetts and New York.

An era of "good feeling" was now to reign. A national president was inaugurated on the fourth of March, 1853. The president selected the following cabinet: William L. Marcy, Secretary of State; James Guthrie, Secretary of the Treasury; Jefferson Davis, of War; James C. Dolbin, of the Navy; Robert McClelland, of the Interior; James Campbell, Postmaster General; and Caleb Cushing, Attorney-General. No change in the personnel of this cabinet took place during this administration, stormy though it was.

CHAPTER XVI.

THE DAYS OF PIERCE AND BUCHANAN.—KANSAS-NEBRASKA.—THE WISCONSIN TROUBLE.—CAMPAIGN OF 1860.

THE “era of good feeling” did not last long.

“Kansas-Nebraska.” These words, on everybody’s lips, were full of deep significance. What did they mean? The Missouri compromise had been contemptuously spurned.

Slavery was nationalized. The passage of the “Kansas-Nebraska” bill not only reversed a former legislation and broke a contract, but completely changed the course of the nation’s history. It estranged the people of one section of the country and spread disaffection among them to such an extent as to render calm and intelligent legislation on slavery almost impossible. For thirty years the Missouri Compromise had performed its part. Florida, Alabama, Arkansas, and Texas had come into the Union as slave States under its operation.

Buchanan had said, in 1845, in advocating the application of the Missouri Compromise to the Texas admission bill, “that controversy had nearly shaken the Union to its centre in an early and better period of our history; but this compromise, should it be now reëstablished, would prevent the recurrence of similar danger hereafter. Should this question be now left open for one or two years, the country would be involved in nothing but one perpetual struggle. We would witness a feverish excite-

ment in the public mind ; parties would divide on the dangerous and exciting question of abolition ; and the irritation might reach such an extreme as to endanger the existence of the Union itself. But closed now, and it would be closed for ever. Was it desirable again to have the Missouri question brought home to the people to goad them to fury ? That question between the two great interests in our country had been well discussed and well decided. He would let the question stand forever.”¹

That question was reopened. The result was the Pittsburgh convention of Feb. 22, 1856, which met to consider the political situation. A long address to the people of the United States was issued, wherein the slavery interest was denounced in the most unmeasured terms. The address while “disclaiming any intention to interfere with slavery in the States where it exists, or to invalidate those portions of the Constitution by which it is removed from the national control,” sketched the progress of the aims of the slave States, and even went so far as to predict that “slavery cannot fail, from the necessity of its nature, to attempt outrages which will awaken storms that will sweep it in carnage from the face of the earth.”

In pursuance of this address, the first Republican national convention was held at Philadelphia, on the 17th of June, 1856. The Hon. Robert Emmet, of New York, was chosen temporary chairman.

It was the most important anti-slavery gathering in the history of the country. It nominated for the presidency neither Seward nor Chase, but the available man, and that man was found in Colonel John C. Fremont. On the informal ballot for Vice-President, William L. Dayton re-

¹ Benton's “Thirty Years' View,” vol. ii., p. 633.

ceived 259 votes, Abraham Lincoln 110, and the remainder were scattered. Dayton's nomination was made unanimous.

The platform proclaimed it both the right and the duty of Congress to prohibit in the territories those twin relics of barbarism—polygamy and slavery. It invited the co-operation of men of all parties, however differing from them in other respects.

The Democratic party had previously met in national convention at Cincinnati, on June 2d. The principles of the Kansas and Nebraska bill were solemnly declared to be the only safe solution of the slavery question. Douglas was passed over to make way for James Buchanan, who had just returned from the Court of St. James. None of the complications connected with the late acts of Congress fettered the latter, and John C. Breckinridge became the nominee for Vice-President.

The presence in this contest of a third candidate, in the person of Millard Fillmore, brings the blush of shame to every true American. He was the nominee of a secret and cowardly political party that had spread over the land. Its cardinal principles were the proscription of foreigners and Catholics. At first, all bowed before it. Calling itself American, it set at defiance the traditions of the country, and seemed to carry every thing before it. The determined attitude of patriots North and South rolled it back. In this presidential canvass it was, however, a disturbing element. In the Southern States it took the place of the Whig party, and received a heavy vote. Maryland alone elected a Fillmore electoral ticket. In the Eastern States the Know-Nothing vote had practically disappeared. It was merged into the Republican party. Fremont carried New York, Iowa, and Ohio by pluralities, while Buchanan

received only pluralities in California, New Jersey, and Illinois.

For the first time in the history of the country, the slave States threw a unanimous electoral vote of one hundred for the same person. Pennsylvania, the Keystone State, gave its electoral vote to the Democratic party for the last time.

Fremont received the solid New England electoral vote. On the 11th of February, 1857, the two Houses of Congress assembled in the Hall of the House of Representatives. James M. Mason presided over the joint meeting.

Up to this year, questions had arisen upon the constitutionality of certain acts of State Legislatures, upon the meaning of the word "State," upon the binding effect of the clause which limits the power of a State in its appointment of electors.

A case now arose wherein a provision of the Constitution had not been followed. In that instrument Congress is given the discretion of determining the day on which the electors shall cast their ballots, but the day determined "shall be the same throughout the United States." The Republican electors of Wisconsin had failed to vote on the first Wednesday of December. A violent snow-storm had swept over the State and impeded all travel. The electors were therefore physically unable to reach the State Capitol in due season. Is the constitutional provision directory or mandatory? If mandatory, the Wisconsin votes were worthless. It was fortunate that the votes were immaterial to the result. The country was in no condition to trifle or temporize with so great a matter. The men who had fought the campaign of Fremont under great difficulties would not have allowed the presidency to slip from their grasp on a mere technicality, but would

have insisted that form should yield to substance. The Democracy, unwilling to surrender the control of a continent, would naturally have demanded a strict observance of the law.

While examining the certificates, the tellers discovered officially that the votes of Wisconsin had not been cast on the day prescribed by law. In the report of the tellers we clearly see in what consists the ministerial act of counting. No discretion was exercised. The facts, as stated in the certificates, were presented to the notice of the two Houses. The votes given for Buchanan were added up, as also those for Fremont. It was, however, distinctly noted that "Fremont's total included the votes of Wisconsin," which had been cast "on the 4th of December, instead of on the first Wednesday of December (which was the 3d) as required by law."

What took place on the reception of the report was something extraordinary.¹ The President *pro tem.*, acting in a most equivocal manner, refused to entertain any motion on the ground that debate was not in order. The same decision was rendered when objection was made during the reading of the Wisconsin certificate. According to these two decisions, the Houses have no jurisdiction during the reading of the certificates, nor in the interval between the delivery of the report and the announcement of the state of the vote. The following question was asked by Senator Crittenden: "Do I understand the Chair to decide that Congress, in no form, has power to decide upon the validity or invalidity of a vote?" The answer given was not satisfactory. The presiding officer, after stating that he "made no such decision," and that his duty was to "announce the vote,

¹ *Congressional Globe*, 34th Cong., 3d Session, pp. 644-668.

which has been delivered to him by the tellers," repeated in substance the report of the tellers, with the exception that five votes of Wisconsin were credited to Fremont without any qualification. In the joint resolution governing the proceeding, we read that "the announcement by the presiding officer, of the state of the vote, and of the persons elected, to the two Houses assembled, shall be deemed a declaration of the persons elected President and Vice-President of the United States." A spirited and interesting debate now sprang up, upon the right of the President *pro tem.* to announce the state of the vote without the permission of the two Houses. The idea of a debate in joint-meeting sounds strange, yet for a short time members of the Senate and House debated. As if in a convention, Mr. Mason was addressed by Humphrey Marshall, a Kentucky Representative, who took exception to the rulings of the Chair. In his opinion "whether that is a vote or not must depend upon the determination of this convention." After he had finished, a question was raised whether debate was in order. The Chair ruled "that the votes having been counted and announced, the functions of the two Houses assembled for the purpose of counting the votes, are discharged." Again was an exception taken, and this time by Senator Toombs, who used the following emphatic language: "I do not consider that the presiding officer, has the right to close the mouths of Senators and Representatives here, in whose hands the decision of this question must rest." Again did the President attempt to explain and defend his decision. After several members had charged him with assuming unwarrantable power, a motion was made "that the vote of Wisconsin be rejected, and that the tellers be instructed not to include it in their count." This motion to reject,

brought things to a crisis. The inconsistent conduct of Mr. Mason was well seen at this juncture. Instead of noticing the objection raised, he said that the Senate having discharged its duty "will return to its own chamber." A moment later, he stated that the tellers had not made out their certificate. Innumerable questions were asked: Who dissolves the joint convention? For what purpose do the two Houses assemble? Has that business been completed? The mover of the resolution suggested that "the Senate retire to their Chamber to determine the question, and allow this House to do the same." The solemn words of Douglas would have been ominous in case of a close election: "I do solemnly protest against the deed being done before we have had an opportunity of deciding this question." It may be remarked that many anti-slavery men, including Seward and Washburn, sustained the action of the President, while Butler, Toombs, and Cobb expressed strong indignation at his conduct. A Senator finally advised the President to adopt a course of action which in high party times, in a doubtful count, would certainly have precipitated a national crisis. According to this Senator, the Constitution and the law had been fulfilled, and therefore there was no necessity for "any further discussion or any further motion." The abrupt departure of the Senate, preceded by its President and other officers, has been the subject of much comment. As soon as the two Houses were each in its own hall, great confusion and uncertainty of views were plainly visible.

In the Senate Mr. Mason explained his conduct, saying: "If the result could have been affected by the collateral fact reported by the tellers . . . the presiding officer would have considered it his duty to have

reported that Buchanan's majority 'would depend on canvassing the votes'—a duty that he did not assume." Several Senators expressed their abhorrence of any construction which would give the President of the Senate authority to judge an electoral certificate. Seward and Collamer were afraid to trust even the two Houses with power to judge the validity of a return. The latter thought, however, that when the tellers discovered a certificate irregular on its face, the fact ought to have been announced to the two Houses, and a separation ought then to have taken place. If such antagonistic views prevailed in the Senate, it was not to be expected that the House would be in good humor. Its members were indignant at the manner of their treatment by the Senate and its President. As soon as the Senate retired members sprang to their feet, some called for the regular order of business, others desired a decision upon the question raised in joint-meeting. By the ruling of the Chair, the House was in session for the transaction of its ordinary business.

Appeals were taken, modifications and changes were made in the original resolution. A powerful speech was delivered by Mr. Marshall on the function of the President of the Senate, on the question of the two Houses voting as one or two bodies. Each House adjourned without coming to a decision. On the following day a resolution was passed appointing a committee to wait on James Buchanan and inform him of his election.

On March 4, 1857, James Buchanan was inaugurated President of the United States. Lewis Cass became Secretary of State; Howell Cobb, of the Treasury; John B. Floyd, of War; Isaac Toucey, of Navy; Jacob Thomp-

son, of the Interior; Aaron V. Brown, Postmaster-General; and Jeremiah S. Black, Attorney-General.

Two days later the Supreme Court of the United States handed down a decision holding that Congress had no power to prohibit slavery in the territories, and that the Missouri Compromise was unconstitutional.¹

This decision, followed by the active aid which was given by the Buchanan administration to the pro-slavery party in Kansas, startled the country. Douglas could go no further. Though bowing to the authority of the Supreme Court, he would not sanction the forcing of the Lecompton constitution upon the people of Kansas. Then came the famous joint debate between Douglas and Lincoln in 1858, and finally the John Brown insurrection. The Democratic majority returned to Congress in 1856 had been converted to a Republican one in 1858.

The sessions of Congress were marked by the most bitter and offensive scenes. The struggle had now become a conflict between those who aimed at the exclusion of slavery from the territories and those who demanded that the Southern man should preserve the power to carry his slave unmolested into the territories and keep him there in slavery. Those who took a middle course in either section were soon displaced. The war of words was soon to end. The people's representatives at Washington had found no solution of the slavery problem. The presidential election of 1860 was now at hand. Its result is well known. The Republican party, stronger than before, met in Chicago May 16th, and on the 18th presented Abraham Lincoln for the presidency, and Hannibal Hamlin for Vice-President. Its doctrine was fearlessly proclaimed. "We deny the authority of Con-

¹ *Dred Scott v. Sandford*, 19 How (U. S.), 393.

gress, of a territorial legislature, or of any individual, to give legal existence to slavery in any of the United States.”¹

A week previous, a so-called constitutional union convention had met in Baltimore. It professed no principles but the Union and the Constitution. John Bell, of Tennessee, and Edward Everett, of Massachusetts, were its candidates. Its motives were highly patriotic and commendable.

Where was the party of Jefferson and Jackson? Had it flung its banner to the breeze? Its Charleston Convention resulted in the withdrawal of the Southern delegation because of the rejection of a majority report of a committee, which declared “that neither Congress nor the territorial legislature has power to abolish slavery in the territories or prohibit the introduction of slaves therein.”

The regular Democracy at an adjourned meeting at Baltimore adopted as its candidates Stephen A. Douglas, of Illinois, and Herschel V. Johnson, of Georgia. The other section of the party chose John C. Breckinridge, of Kentucky, and Joseph Lane, of Oregon.

Four parties were now in the field. No one could deny that the election of Lincoln was inevitable. The South apparently wished to avoid this result.

The nomination of Breckinridge set men to thinking. Douglas made a gallant fight, but in vain. The whole power of the Buchanan administration was exerted against him. The union sentiments enunciated by him in the canvass disclosed his patriotism. A fusion of the Democratic electoral tickets in many of the States was attempted, but the deed done could not be undone. Lin-

¹ “Appleton’s Encyclopædia,” vol. xvi., p. 173.

coln carried 18 free States, which cast 180 votes in the electoral college, 152 being necessary to make a choice. Breckinridge received the support of 11 slave States, possessing 72 votes, and Kentucky, Tennessee, and Virginia threw their influence for Bell. Douglas barely carried Missouri, and only gained three electoral votes in the free States, and these were received because all the Democrats supported three specified electors pledged to Douglas in New Jersey.

Douglas, backed by 1,375,157 men, was represented by 12 electors, and Breckinridge, with half a million votes less, received six times as many electoral votes, and Bell, with three quarters of a million less, had more than three times the electoral vote. Lincoln received nearly forty per cent. of the popular vote, and nearly sixty per cent. of the electoral vote. These statistics show the unfair character of our present mode of choosing a President. The prevalence of the general-ticket system in all the free States resulted in a consolidated Northern electoral vote for Lincoln. Such a vote was to be deplored as sectional and dangerous. Under the most depressing circumstances the Congressional elections of 1860 resulted in the success of the Democratic party in a number of districts. If each of these districts had been allowed to cast one vote for President, the sentiment in the free States opposed to Lincoln would have had its due weight, and the sectional character of the conflict, much lessened. The election would then have been thrown into the House of Representatives. In fact, many had thought that such would be the case. The House, though Republican per capita was not so by States.

On the 13th of February, 1861, the electoral votes were counted. The two Houses assembled according to the

usual joint resolution. John C. Breckinridge, then Vice-President of the United States, presided over the joint-meeting. A defeated candidate for the presidency, and soon to take up arms against the government, was he to count the votes? No, his duty, as he himself said, was "to open the certificates of election in the presence of the two Houses of Congress."¹ The count, however, proceeded peacefully, and Abraham Lincoln, of Illinois, was declared elected President of the United States, and Hannibal Hamlin, of Maine, Vice-President. But some familiar faces were missing at the count, some chairs were empty, and for the first time in the history of our government a Southern man had failed to reach either the presidency or the vice-presidency.

It was the eve of the civil war. South Carolina had taken the initiative, and at the time of the count, together with six other States,² had, through conventions, declared themselves withdrawn from the Union, and were to be henceforth separate, sovereign, free, and independent States. All national authority in the cotton States had been overthrown. The arm of the government was paralyzed. Indecision marked the course of President Buchanan. His training and associations had unfitted him for the difficult task before him. His cabinet crumbled away. Some resigned when he tried to do a loyal act, others when he failed in his duty.

On the 9th of Feb., 1861, a body of men calling themselves the representatives of the Confederate States of America, chose Jefferson Davis, of Mississippi, to be the president, and Alexander H. Stephens, of Georgia, to be the vice-president of a great part of the American Union. On

¹ *Congressional Globe*, 36th Congress, 2d Session, p. 893.

² Mississippi, Florida, Alabama, Georgia, Louisiana, Texas.

the 18th of February Davis was inaugurated, and a few days later the extraordinary spectacle was exhibited of a cabinet appointed by Davis, mostly composed of those who had been formerly Senators and Representatives of the United States.

The advocates of slavery extension had appealed from the ballot-box to the battle-field.

CHAPTER XVII.

THE PERIOD OF THE "CIVIL WAR" AND "RECONSTRUCTION."—THE CONSTITUTIONAL AMENDMENTS.—THE COUNT OF ELECTORAL VOTES.

ON the 4th of March, 1861, Abraham Lincoln was inaugurated President of the United States, in the darkest hour of our history. His position was peculiarly critical. He was a minority President, with the most pronounced views on slavery. He had once said "that this government cannot endure permanently half slave, half free."¹ Such a statement was well calculated to alarm the Southern people. In his inaugural message, however, he solemnly declared that the institution of slavery was in no danger.

His cabinet was as follows: William H. Seward, of New York, Secretary of State; Salmon P. Chase, of Ohio, Secretary of Treasury; Simon Cameron, of War; Gideon Wells, of the Navy; Caleb B. Smith, of the Interior; Montgomery Blair became Postmaster-General; Edward Bates, Attorney-General. Chase resigned in June, 1864, to accept the Chief-Justiceship of the United States. Cameron, in January, 1862, gave way to Edwin Stanton, who had been Attorney-General during the closing days of Buchanan's administration. Blair resigned at the request of the President, just before the fall election of 1864. Seward and Wells alone remained during the term.

Events now followed in rapid succession. The firing on

¹ Raymond's "Life of Lincoln," p. 52.

Fort Sumter on April 13th, the President's proclamation on April 15th, the Virginia ordinance of secession on the 17th of April, followed by Tennessee and North Carolina on May 20th. The civil war now began. July 4, 1863, was the turning point in the great conflict. Gettysburgh and Vicksburg broke the backbone of the Confederacy, and marked its downward course never to be retraced.

In the year 1864, the twentieth presidential election took place under the most peculiar and extraordinary circumstances. The population of many States of the Union was still resisting the authority of the United States government.

The Republican party met in convention in the city of Baltimore on the 7th day of June, and renominated Abraham Lincoln, but failed to renominate Mr. Hamlin. The action of the convention in admitting delegates from Tennessee with full rights was a very important element that determined the choice of Andrew Johnson for Vice-President. The platform spoke in no doubtful tones for a vigorous prosecution of the war, and demanded a constitutional amendment prohibiting the existence of slavery in the United States. The candidacy of John C. Fremont, with extreme radical principles, deserves no notice.

On the 29th of August the Democratic National Convention met in Chicago, and perpetrated, to use the mildest expression, the greatest political blunder of the century. Its peace platform was an insult to the Democratic masses of the North, in whom loyalty and love of country have ever been distinguishing traits. The nomination of Gen. George B. McClellan, a distinguished Union soldier, put the platform in the background. His letter of acceptance was in marked contrast with the unequivocal peace sentiments of the platform, and kept within the ranks the

greater part of the war Democrats. The election was held on the 8th day of November, and resulted in the re-election of President Lincoln. In three States, where rebellion was said to be existing, men, claiming to be electors, met and cast votes. The reception of an electoral certificate from Louisiana complicated matters considerably.

In the early part of February, a joint resolution was agreed to by both Houses of Congress, declaring that eleven States were not entitled to representation in the electoral college. The grounds upon which the two Houses rejected votes from these States were stated in the preamble :

“Whereas the inhabitants and local authorities of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee rebelled against the government of the United States, and were in such condition on the 8th day of November, 1864, that no valid election for electors of President or Vice-President, according to the Constitution and laws thereof, was held therein on said day.”

The merits of President Lincoln's plan of reconstruction were involved in this resolution. Many points were raised. Was Louisiana an American State? Was a State government there? Did civil commotion or insurrection exist among the people of Louisiana to such an extent that no election could be held? Was the Constitution violated by the interference of the military, who prescribed the qualifications of voters? In reply to these points it was urged that the Southern States “could not be out of the Union,” and that “all the privileges,” and that “all the rights” should be extended to those States which “have, by the aid of the general government, or by the efforts of

their own people, or by the aid of both combined, re-established themselves, so to speak, or set their State governments in action anew"; that the refusal of a majority of the people to participate in an election, did not deprive a minority (no matter how small) of their rights. The joint resolution was signed by President Lincoln on the 8th of February. The following important message to the two Houses was also written :

" To the Honorable Senate and House of Representatives of the United States :

"The joint resolution, entitled ' A joint resolution declaring certain States not entitled to representation in the Electoral College,' has been signed by the Executive in deference to the view of Congress implied in its passage and presentation to him. In his own view, however, the two Houses of Congress, convened under the twelfth article of the Constitution, have complete power to exclude from counting all electoral votes deemed by them to be illegal, and it is not competent for the Executive to defeat or obstruct the power by a veto, as would be the case if his action were at all essential in the matter. He disclaims all right of the Executive to interfere in any way in the matter of canvassing or counting the electoral votes, and he also disclaims that by signing said resolution he has expressed any opinion on the recitals of the preamble, or any judgment of his own upon the subject of the resolution.

“ ABRAHAM LINCOLN.

“ EXECUTIVE MANSION, February 8, 1865.”¹

The trouble of this year was the occasion of the adoption of the twenty-second joint rule, on the 6th of February, which regulated and governed the counting of the electoral votes of that year, and of the two succeeding

¹ Raymond's " Life of Lincoln," p. 664, and *Congressional Globe*, 38th Congress, 2d Session, p. 711, February 10, 1865.

presidential elections. No vote objected to was to be counted except by the concurring vote of the two Houses.

The two Houses met on the 8th of February, and the votes were counted. Vice-President Hamlin presided. In reply to a question, the Vice-President said: "The Chair has in possession returns from the States of Louisiana and Tennessee, but in obedience to the law of the land, the Chair holds it to be his duty not to present them to the convention." Several motions were then made. Senator Cowan only desired to bring to the attention of the convention the question of its exclusive authority to determine such questions. A representative from New York interposed an objection to the votes of "the so-called State of West Virginia." The motion was made too late—was the decision of the Chair. The Vice-President declared the election of Abraham Lincoln and Andrew Johnson. The Louisiana votes were not counted, though the electors had been appointed by the same Legislature which ratified the Thirteenth Amendment in the Constitution.

On the 4th of March, 1865, Lincoln was inaugurated, and began his second term of office, with Seward, Stanton, Welles, Usher, Dennison, and Speed in the cabinet. Hugh McCulloch became Secretary of Treasury.

On the 11th of April, General Robert E. Lee, with a handful of brave men, surrendered to General Grant, who was in command of one of the finest armies the world had ever seen. But the joy of the nation was short-lived, and was soon turned to grief. Three days later President Lincoln was assassinated, and died at twenty-two minutes past seven o'clock, on the fifteenth of April. A nation mourned his loss. He was truly a martyr-president. How great a loss his country sustained cannot be estimated. During the dark days of reconstruction, the need of a

Lincoln was strongly felt. No mercenary motive or vindictive feeling found a place in his heart.

The death of Lincoln worked a mighty change in our history.

Johnson, who was formally notified of the fact by the cabinet, forthwith took the oath of office as President. The Hon. Lafayette S. Foster, of Connecticut, had been chosen President *pro tem.* of the Senate on March 7, 1865, but afterwards, on the assembling of the Senate, the Hon. Benjamin F. Wade was selected as the President *pro tem.* of the Senate. There was no Speaker of the House.

An irreconcilable difference of opinion between the new Executive and the Congress was now manifested.

The history of the next four years is a constant repetition of a struggle, on the one hand, to limit the power of the Executive, and on the other, to hinder the enforcement of the views of Congress. The reconstruction acts were passed over the President's veto, whereby the eleven States heretofore in rebellion were divided into five military districts, and were not allowed to be represented in the Halls of Congress, until certain preliminary conditions had been complied with.

The disagreement between Congress and the President at last terminated in the passing, by the House of Representatives, on the 22d of February, 1868, of a resolution that the President be impeached for high crimes and misdemeanors. On the 5th of March, notices of impeachment were presented to the United States Senate, which, for the first time, became a court for the trial and impeachment of a President of the United States. Chief-Justice Chase presided over the Senate. On the taking of the vote, every Senator was present, fifty-four in number; thirty-five voted for conviction, and nineteen for acquit-

tal. The seven Republican Senators: Fessenden, Fowler, Grimes, Henderson, Trumbull, Ross, and Van Winkle, stood like stone walls against the fierce attacks of their party, and refused to brand with dishonor the man who alone, of the twenty-two Senators from the seceding States, kept his post, and who afterwards, as war governor of Tennessee, won the admiration of the country. The impeachment therefore failed; one vote more and it would have prevailed.

It was unfortunate that Johnson had not been one of the original anti-slavery leaders, though he was but carrying out the ideas of Lincoln, Seward, and Chase, in many important particulars.

On the 28th day of July, 1868, the Fourteenth Amendment was declared to be supreme law of the land. Article II. of this Amendment increased the political importance of the Southern States. It could not consistently do otherwise. Representatives were to be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State. According to the old Constitution, the whole number of free persons was to be added to three fifths of the slaves. The number of electors to which a State is entitled is equal to the whole number of Senators and Representatives, and the Southern States became entitled to an increased number of electoral votes. This article further provided that when the right to vote at any election for the choice of electors for President and Vice-President of the United States . . . is denied to any of the male members of such State, the basis of representation therein shall be proportionally reduced. The meaning of the words "is denied" has been variously construed. Is an illegal act or measure of a department or officer of a State govern-

ment necessary before a State can be deprived of its electoral strength? This seems to be the only rational construction, and the other view is unreasonable and unjust, that the government of the United States can deprive a State of its electoral strength, which has on its statute-books liberal laws of election, because on some isolated and particular occasion citizens were prevented from voting, perhaps by individuals residing in an adjoining State.

The third paragraph of the Amendment provides that no person shall be an elector of President and Vice-President who has held an office under the United States or any State, and afterwards engaged in rebellion or insurrection.

Candidates for the presidency were already in the field. The Republican convention assembled in Chicago on May 21, 1868, and nominated Gen. Ulysses S. Grant for President, and Speaker Schuyler Colfax for Vice-President. The policy of Congress in its treatment of political questions growing out of the war was strongly advocated.

The Democracy met in Tammany Hall, in the city of New York, on July 4th, and nominated Horatio Seymour for President and Francis P. Blair for Vice-President. The reconstruction acts were denounced "as usurpations, and unconstitutional, revolutionary, and void."

Well-defined issues now separated the two parties, but the nomination had been forced upon Governor Seymour against his earnest wish. The nomination of Salmon P. Chase would have been more politic in the present state of affairs. The disturbed and unsettled condition of the Southern States still vexed the public councils. The States of Texas, Virginia, and Mississippi did not participate in the election. In the other Southern States the

so-called friends and upholders of the general government had intrenched themselves.

On the 20th of July, 1868, in the closing days of the second session of the 40th Congress, a joint resolution passed both Houses, providing that no electoral votes from a late rebellious State should be counted, until, among other conditions, "such State should have become entitled to representation in Congress, pursuant to the acts of Congress." The resolution was vetoed by President Johnson. He also sent a message,¹ from which the following extract is taken :

"The mode and manner of receiving and counting the electoral votes for President and Vice-President of the United States are in plain and simple terms prescribed by the Constitution. That instrument imperatively requires that the President of the Senate 'shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.' Congress has, therefore, no power under the Constitution to receive the electoral votes or reject them. The whole power is exhausted when, in the presence of the two Houses, the votes are counted and the result declared. In this respect the power and duty of the President of the Senate are, under the Constitution, purely ministerial. When, therefore, the joint resolution declares that no electoral votes shall be received or counted from States that since the 4th of March, 1867, have not 'adopted a Constitution of State government under which a State government shall have been organized,' a power is assumed which is nowhere delegated to Congress."

The veto was overruled, and the resolution became law. The presidential election resulted in the triumph of the Republican party. The 22d joint rule was still in force,

¹ July 20, 1868. Appleton's "Presidential Counts," p. 555.

as well as the resolution of July 20, 1868. The votes of Louisiana and Georgia were in dispute. It was thought by many, however, that the 22d joint rule would not cover the case of the Georgia vote, as it was doubtful whether Georgia had complied with the requirements of the resolution of July 20th, under which her right to vote was regulated. To obviate a discussion upon the merits of the controversy then pending in regard to the rights of the Georgia Senators to take their seats, or of her Representatives to retain their seats, it was suggested that the Georgia votes should be counted hypothetically, as were the votes of Missouri and Michigan.

Accordingly the two Houses agreed to a resolution which virtually suspended the operation of the 22d joint rule in regard to the votes of Georgia. In the joint-meeting it would be necessary to delay the Georgia votes, and then, if the result would not be essentially altered, they must be counted hypothetically, regardless of all objections, based either upon the non-fulfilment of the conditions of reconstruction, or upon the violation of constitutional provisions.

On Feb. 12, 1869, the two Houses assembled in the hall of the House of Representatives to witness the opening of the electoral certificates. Objection was made to the counting of the vote of the electors of Louisiana. The mode of procedure to be followed in such a case was prescribed by Rule 22.

After the objection had been presented in the regular form, the Senate withdrew to its own apartment. In the House of Representatives the question was immediately submitted by the Speaker. No time was allowed for explanation, no testimony could be offered, no debate could be engaged in. The House refused to sustain the objection, and the Senate acted likewise. In the latter

body the Chair ruled that "nothing but a direct response to the objection made is in order."

Neither House having objected to these votes, they were therefore counted. Up to this point no difficulty had been encountered. The regular rule had been obeyed to the letter.

The interest that centres around the proceedings of this year, is owing chiefly to the disgraceful scene that was enacted in joint-meeting during the enforcement of the resolution which ordered the Georgia votes to be counted in a particular way.

If the scene about to be described was possible in an unquestioned election, and when the two Houses were controlled by the same political party, we shudder at the thought of the danger that is lurking in our body politic. Benjamin F. Butler was the mischief-maker of the day. Four objections were made by him to the counting of the Georgia votes. Three of them, if sustained, would have accomplished the very thing which the two Houses, by a concurrent resolution, had agreed to avoid. One of the objections, however, was of a different character, and was fatal to the validity of the Georgia votes. The electors had not voted on the day required by law. Which resolution was to govern the disposition of the Georgia votes?

Was the President of the Senate in accordance with the resolution to report the result of the votes without referring the question to the Houses, or was he, under Rule 22, to declare that the two Houses must separate, and that the votes must be rejected, unless unanimous consent is obtained to receive them? President Wade felt "disposed to hold the Senate and House of Representatives to their own concurrent resolution," but being disconcerted by the uncertainty that prevailed, he gave his opinion that the contingency had arisen for a separation.

Each House was called upon to give its decision upon the questions raised in joint-meeting. What questions were to be decided? The majority of the Senate believed that the point at issue was whether an objection could be taken to the Georgia votes, and on that question the Senate resolved that the objections were "not in order."

The House, on the other hand, voted to sustain the objections of Butler, and therefore resolved that the Georgia votes should not be counted. Each House, having learned of the action of the other, considerable uneasiness prevailed among thoughtful members in regard to the final disposition of the votes.

The two Houses reassembled, the presiding officer stated that the objections were "over-ruled by the Senate" and the count must proceed. This ruling of the Chair was the signal for uproar and confusion. Amid cries, counter cries, appeals, questions, and undignified remarks, Ben Wade performed his duty. Receiving a statement of the votes from the tellers, he announced the result of the election in the manner prescribed by the joint resolution.

Three days were spent by the House of Representatives in debating upon the action of the President of the Senate.

Several able speeches were delivered on this occasion. Like all others delivered on the law of election they teach the same lesson. Without some previous law regulating the manner of settling disputed questions, the country is liable at any moment to be plunged into a state of anarchy.

Grant and Colfax received 214 electoral votes, and 3,015,071 popular votes. Seymour and Blair received 80 electoral votes, and 2,709,613 popular votes. Grant and Colfax were declared elected President and Vice-President.

CHAPTER XVIII.

THE GREELEY CAMPAIGN.—DEATH OF GREELEY.—SENATORIAL INVESTIGATION OF THE ELECTION.—PROCEEDINGS OF CONGRESS AT THE COUNT.

THE first break in the Republican party occurred at the close of General Grant's first term of office. The movement was inaugurated and supported by some of the ablest of the anti-slavery leaders. The Cincinnati convention of the "Liberal Republicans" held on May 1, 1872, nominated Horace Greeley for President, and Gratz Brown for Vice-President.

The platform was as liberal as the party. The warm hand of fellowship was extended to the Southern people. The usual platitudes of a political party are found also in the platform.

These candidates and this platform were adopted at a convention of the National Democracy, at Baltimore, July 9th. The Republican party assembled in convention at Philadelphia, on June 5th. General Grant was unanimously re-nominated for President, but Vice-President Colfax failed of a renomination, and the vice-presidency was tendered to Henry Wilson. The platform appealed to the history of the party, and demanded the co-operation of the general government in suppressing what it termed "violent and treasonable organizations in certain lately rebellious regions."¹ The canvass was spirited and exciting. Personalities were frequently employed. The can-

¹ "Appleton's Encyclopedia," vol. xvi., p. 186.

didacy of Greeley as a Democrat was inconsistent, if not ludicrous. Nothing in his career endeared him to the Democratic masses. Greeley was the last one of the anti-slavery leaders to have been selected to receive Democratic support.

The election took place in November, and resulted in the re-election of President Grant. The popular vote in many States was less than in 1868, and the Republican majority in all the States was greater than at any election before or since that time. Many Democratic voters refused to support Mr. Greeley. On November 29th Mr. Greeley died. On December 4th the presidential electors met and voted for President and Vice-President. What would the Greeley electors do? No provision is made in the Constitution for this unforeseen event, for it could not happen according to the theory of the Constitution. The nation, fortunately, was not compelled to resort to any extraordinary remedy, as the deceased had not been the successful candidate.

Could the electors possibly unite upon a person acceptable to the people who had supported the deceased candidate? Should electors exercise their own judgments? If the electors would scatter their votes or would cast blank ballots, the election would be thrown into the House of Representatives, where a majority of States might be in favor of the candidate voted for by the electors who represented the defeated party. In the particular case of 1872 the Democratic electors distributed their votes among several persons. Three electors of the State of Georgia persisted in voting for Horace Greeley.

On January 7, 1873, the Senate directed its Committee on Privileges and Elections, "to inquire and report whether the recent election of electors for President and Vice-President has been conducted in the States of Louisi-

ana and Arkansas in accordance with the Constitution and laws of the United States, and what contests, if any, have arisen as to who were elected as electors in either of said States, and what measures are necessary to provide for the determination of such contests . . .”¹ The report of this committee is valuable only so far as conclusions were reached upon disputed interpretations of law. “If Congress chooses to go behind the governor’s certificate and inquire who has been chosen as electors, the principle of the right of the States to prescribe what shall be the evidence of the election of electors is not violated, because it is simply going behind the evidence as prescribed by an act of Congress.” The committee thereupon report that “the official returns of the election of electors, from the various parishes of Louisiana, had never been counted by anybody having authority to count them.” The facts in this election were complicated. Rival returning boards claimed recognition. The air was full of rumors of corruption and illegal voting. At the same election, a governor was voted for. Kellogg and McEnery were the candidates. We meet the same trouble in 1876, and with the same familiar names. The committee were of opinion that the returning board had no authority to make investigation into fraud, violence, and tumult, “unless the foundation is first laid by the sworn statement of the officers of election.”

The mode of procedure adopted by the returning board that announced the election of the Grant electors, is well illustrated by the committee.

“The Lynch board, in making their count, without having the sworn statements of the officers of the election to give

¹ *Congressional Globe*, January 7, 1873, p. 364. The report of this committee is found in *Congressional Globe*, Feb. 10, 1873, pp. 1216, 1217.

them jurisdiction to investigate, received affidavits, the statements of supervisors of election appointed under the act of Congress, letters and verbal statements upon which they assumed the authority, in some cases, to reject the entire vote of parishes, and in many instances to throw out the vote of particular polls and wards, and in others to estimate and fix the vote at about what they supposed it ought to be from their knowledge of the political status of the parish or locality."

Such opinion is very similar to the argument of Tilden's counsel before the Electoral Commission. The further statement is made that the committee are of opinion that neither the Senate of the United States nor both Houses jointly have the power under the Constitution to canvass the returns of an election and count the votes to determine who have been elected presidential electors, but that the mode and manner of choosing electors are left exclusively to the States.

In this connection it may be of interest to know that Senator Morton thought that the decision of the Supreme Court of Louisiana, as to which was the legal returning board, should be brought to the notice of the Senate, although the majority of the committee were of opinion that the decision came too late. Morton's words, that "the decisions of courts of last resort are made at the end of causes, and not at the beginning, and are held to relate back and establish the rights of the parties throughout the whole controversy," might be applied to the Florida case in 1876.¹

At the joint-meeting on February 12, 1873, more objections were raised and decided than on any other previous occasion. The death of Mr. Greeley, and the unsettled condition of the Southern States opened a wide field of action.

¹ See p. 198.

Objections were offered in a reckless manner. This spirit was encouraged and strengthened by the continuance of Rule 22.

One of the chief historical precedents urged by the Tilden counsel before the Commission was the jurisdiction asserted and exercised by Congress at this count. Two returns had been received from the State of Louisiana. Seven objections were in succession offered when this State was reached. The report of the Senate committee was considered by many to contain evidence sufficient to justify the rejection of all the votes. The two Houses concurred in such a view. The votes of Arkansas were rejected chiefly on the technical plea that the return did not contain the seal of the State. Three votes from Georgia, cast for Greeley, were thrown out by the non-concurrence of the House. Several attempts to reject the votes of the States of Texas and Mississippi failed. The vote of Texas was counted notwithstanding the absence of a certificate from the governor.

The further objection was offered that four electors out of eight had no power to fill four vacancies. The House resolved : " That a quorum is an arbitrary number, which each State has the right to establish for itself, and as it does not appear that the choice of electors was in conflict with the law of Texas as to a quorum for the transaction of business, the vote of the electors for President and Vice-President be counted." The count was now completed. General Grant was declared duly elected President of the United States, and Henry Wilson Vice-President. Grant carried 31 States with 286 electoral votes, and received a popular vote of 3,597,070. The opposition carried 6 States with 47 electoral votes, and received 2,834,079 popular votes.

CHAPTER XIX.

GRANT'S ADMINISTRATION.—MORTON'S AMENDMENT.—
DEMOCRATIC TIDAL WAVE.—THIRD TERM.—PLAT-
FORMS OF PARTIES.

THE events of Grant's administration, extending over a period of eight years, are too fresh in the reader's mind to need recapitulation.

Two topics connected with our subject were extensively discussed at this time: the need of a constitutional amendment concerning the mode of choosing a President; and the absolute necessity of providing by law a mode of settling disputed questions that might arise.

So many proposed amendments were submitted in every session in each House, that any attempt to give the various shades of difference between them would lead to no practical good. All can be classified into three general divisions: a purely popular and national method; a qualified national method; the retention of the old method, except in the matter of the length of tenure and eligibility of the Executive, and of solving the old difficulty as to the power of the government over the votes. According to the first plan, the President "shall be elected by a direct vote of the people of the several States, and the electors in each State should have the same qualifications as the electors of the most numerous branch of the State Legislature."

The third plan, which permits the continuance of the

Electoral College, of the general-ticket system, and of the eventual election by States in the House, deserves no attention.

The second plan, providing for a uniform district system, was proposed by Oliver P. Morton of Indiana. The mention of this Senator brings to our minds the memory of "Tom" Benton. Both were chairmen of Senate committees; both presented able reports upon the advisability of a change; both agitated the question in successive sessions of Congress; and both died without accomplishing their purpose. Morton introduced several modifications upon the plan of Benton.¹ Both agreed that the person having the highest or greatest number of votes in a district should receive one vote. Benton required a majority vote, and therefore made a second election possible. Morton's plan was intended to make the first election decisive. "The person having the highest number of presidential votes in the United States shall be President." Yet no provision is found for the case of two or more persons receiving an equal number of presidential votes. According to Benton's plan, the States were to be districted by the State Legislatures, but Morton's plan gave Congress power to "make or alter the same."

It is a matter of doubt whether the danger of a sudden, universal gerrymandering would not counterbalance all of the advantages of the national control of the apportionment. Benton's plan gave to the State Legislatures exclusive control of holding the elections and "canvassing the votes and certifying the returns," while that of Morton authorized Congress "to provide for holding and conducting the elections of President and Vice-President,

¹ Benton's "Thirty Years' View," vol. ii., p. 628.

and to establish tribunals for the decision of such elections as may be contested."

The truth of Benton's remark that "no great reform is carried suddenly," that "it requires years of persevering exertion to produce the unanimity of opinion which is necessary to a great popular reformation," was seen in the fate of Morton's amendment.

All attempts to amend the Constitution had failed. The same fate awaited all proposed legislation carrying out the clause "the votes shall then be counted." On this subject Mr. Morton was indefatigable in his exertions. He introduced a bill into the Senate providing for the disposition of disputed returns. This bill for more than two years was made the basis upon which the question was discussed.

In regard to a single return from a State, no change was made from the bill of 1824. The manner of dealing with double returns was the main point at issue. "That return from each State shall be counted which the two Houses acting separately shall decide to be the true and valid return," was the language of the bill. It is a matter of record that the discussions from 1873 to 1876 showed the greatest diversity of views among our public men as to the jurisdiction of Congress over the electoral votes. Some Democratic Senators from the South advocated the right of the President of the Senate to count the votes.

Almost all the Democratic Senators scorned the idea of allowing the government to question the conclusion reached by the final authority in a State. Of this opinion there were several Republican Senators from the Eastern States, but the great body of the Republican members thought that Congress could prescribe the manner of counting the votes, and of deciding upon disputed returns.

None of them would sanction for a moment the claim that the President of the Senate could exercise his own judgment by opening only those certificates which he deemed to be legal.

Morton's bill passed the Senate on two occasions, but the second vote was reconsidered. The bill was not supported by the Democratic Senators. Nothing was done in the House of Representatives.

Was Rule 22 to govern the count of 1876?

Time alone would tell.

On the 19th day of March at an extra session of the Forty-fourth Congress, Thomas W. Ferry, of Michigan, was chosen President *pro tem.* of the Senate. On the 22d of November, 1875, Henry Wilson, the Vice-President, died. His death gave rise to a discussion in the Senate on the tenure of office of the President *pro tempore* of the Senate. It was unanimously agreed that the tenure of office of the President *pro tempore* of the Senate, elected at one session, does not expire at the meeting of Congress, after the first recess, the Vice-President not having appeared to take the chair, and by a similar vote, that the death of the Vice-President does not have the effect to vacate the office of President *pro tempore* of the Senate; and by a vote of thirty-four to fifteen, it was declared that the office of President *pro tempore* of the Senate is held at the pleasure of the Senate. Twenty-three Senators were absent.

The passing events of these years were sufficient warning to the legislators in Congress. The elections of 1874 had changed the political complexion of the House of Representatives. For the first time since the breaking out of the war, the Democratic party came into possession of the popular branch of Congress. The causes of this

“tidal wave” need not be here discussed. The condition of Louisiana during this period was lamentable. Calls for United States troops were the rule, not the exception. The “rising” on the 14th of September, the physical overthrow of the Kellogg government; the proclamation of President Grant on September 15th, ordering the dispersal of the forces summoned by the McEnery government, the presence of regular troops in the Legislature of the State; the letter of Gen. Sheridan to Secretary Belknap, desiring Congress to pass a bill declaring the leaders of the anti-Kellogg faction “banditti”; all these events portended a fearful struggle in 1876. In other Southern States, a similar state of affairs existed. Every year civil commotion disturbed those States. The political events of Grant’s administration formed the basis of the presidential contest of 1876, which was now fast approaching. The Third Term question was discussed, but never seriously advocated.

The House of Representatives by the decisive vote of 234 to 18 resolved: “That, in the opinion of this House, the precedent established by Washington and other Presidents of the United States, in retiring from the presidential office after their second term, has become, by universal concurrence, a part of our republican system of government, and that any departure from this time-honored custom would be unwise, unpatriotic, and fraught with peril to our free institutions.”¹ The same view was proclaimed in several of the States. The opinion of General Grant himself will no doubt interest the reader. The only occasion on which he expressed his views was on the 29th of May, 1875, in a letter to the Republican State Convention of Pennsylvania. After speaking of his two terms, he says:

¹ McPherson’s “Hand-Book of Politics for 1876,” p. 143.

“Now for the Third Term. I do not want it any more than I did the first. I would not write or utter a word to change the will of the people, in expressing and having their choice. The question of the number of terms allowed to any one Executive can only come up fairly in the shape of a proposition to amend the Constitution, a shape in which all political parties can participate, fixing the length of time or the number of terms for which any one person shall be eligible for the office of President. Until such an amendment is adopted, the people cannot be restricted in their choice by resolution, further than they are now restricted as to age, nativity, etc. It may happen in the future history of the country that to change an Executive because he has been eight years in office will prove unfortunate, if not disastrous. The idea that any man could elect himself President, or even re-nominate himself, is preposterous. It is a reflection upon the intelligence and patriotism of the people to suppose such a thing possible. Any man can destroy his chances for the office, but no one can force an election, or even a nomination.

“To recapitulate : I am not, nor have I ever been, a candidate for a renomination. I would not accept a nomination if it were tendered, unless it should come under such circumstances as to make it an imperative duty—circumstances not likely to arise.”¹

The Republican National Convention met in Cincinnati on the 14th of June. The platform appealed again to the history of the party, demanded a vigorous Southern policy, and arraigned the Democratic party as seeking to perpetuate sectional strife.

Rutherford B. Hayes of Ohio was nominated for President, and William A. Wheeler of New York for Vice-President. Samuel J. Tilden and Thomas A. Hen-

¹ McPherson's "Hand-Book of Politics for 1876," p. 154.

dricks were selected by the Democracy assembled in St. Louis on the 28th of June. The leading idea pervading their platform was the necessity of reform in the national government. A change was demanded, they said, "lest the disease of one political organization infect the body politic, and lest by making no change of men or parties, we get no change of measures, and no real reform."

CHAPTER XX.

THE TILDEN-HAYES CONTEST OF 1876.

WE now approach a subject which has left so deep an impression upon the public mind that an impartial account can be scarcely written.

On Tuesday, the 7th of November, 1876, the American people went to the ballot-box, and voted for a President of the United States. The next morning, the news flashed over the country that Samuel J. Tilden, the Democratic candidate, had been chosen to that high office. The Republican leaders did not arrive at this view. The Democratic candidate had received 184 electoral votes, cast by electors chosen in 17 States, and lacked one vote of a majority. The Republican candidate was considered to be entitled to 166 votes, the electoral strength of 18 States.

How the States of Florida, Louisiana, and South Carolina had voted, was the question of the hour. The country was plunged into the greatest excitement. The proceedings in these three States were watched with anxious eyes. Representatives of the two great parties began to gather in the State capitals. The most extraordinary rumors were spreading, concerning the probable action of the canvassing or returning boards, which possessed, it was claimed, extraordinary powers of a judicial and discretionary nature. In the hands of the members of these boards, rested the power of making the next President.

A further complication ensued in the refusal of Governor Grover, of Oregon, to issue to J. W. Watts, a Republican elector, a certificate of election, on the ground that Watts was ineligible. Throughout the country, the claim was advanced by many that Thomas W. Ferry, President *pro-tem.* of the Senate, was to count the electoral votes. This only added fuel to the excitement. A claim, more consonant to popular ideas, yet unsafe and unsatisfactory, was urged that no vote could be counted against the consent of the House of Representatives. Congress met on Monday, the 4th of December, 1876. Determination was written on the face of every one. The pent-up feelings of four weeks were now let loose.

The temper of the Senate was shown in the introduction of a resolution by Mr. Edmunds, on the first day of the session. Very strong and weighty objections were offered to the resolution by Messrs. Bayard and Thurman. In the opinion of the former: "It is the assumption of powers that do not belong to this body; it is the perpetuation of a system of inquisition and interference that has never produced other fruits than those of discord and unhappiness; it is the deliberate continuance of a system that has plainly met with the reprobation of the people of the United States, without respect to political party, and I can see that the substance of this inquiry is nothing less than the grasp at a jurisdiction over the domestic and internal affairs of the States, boundless in its extent, and unending in its application."

The resolution, which was passed by a strict party vote of 41 Republicans to 25 Democrats opposed, read as follows:

"Whereas it is provided by the second section of the fourteenth article of the amendments to the Constitution of the

United States, that Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced to the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. And whereas it is alleged that in several of the States, and particularly in the States of South Carolina, Georgia, Florida, Alabama, Louisiana, and Mississippi, the right of male inhabitants of said States, respectively, being twenty-one years of age, and citizens of the United States, to vote at the late election of electors for President and Vice-President of the United States, and for Representatives in Congress, and for the executive and judicial officers of such States, and for members of the Legislature thereof, has been denied or greatly abridged : Therefore *Resolved*, That the Committee on Privileges and Elections, when appointed, be, and it hereby is, instructed to inquire and report as soon as may be—

“I. Whether in any of the elections named in said amendment, in said States, in the years 1875 or 1876, the right of any portion of such inhabitants and citizens to vote as aforesaid has been in any wise denied or abridged.

“II. To what extent such denial or abridgment has been carried.

“III. By what means such denial or abridgment has been accomplished.

“IV. By whom has such denial or abridgment been effected.

“V. With what motives and for what purposes has such denial or abridgment been carried on.

“VI. By what authority or pretended authority has such denial or abridgment been exercised.

“*Resolved* further, That said Committee be, and is hereby, instructed to inquire into the eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th day of November last, or to be ineligible as electors of President and Vice-President of the United States, to whom certificates of election have been or shall be issued by the executive authority of any State as such electors, and whether the appointment of electors, or those claiming to be such in any of the States, has been made either by force, fraud, or other means, otherwise than in conformity with the Constitution and laws of the United States, and the laws of the respective States ; and whether any such appointment or action of any such elector has been in any wise unconstitutionally or unlawfully interfered with ; and to inquire and report whether Congress has any constitutional power, and, if so, what and the extent thereof, in respect of the appointment of, or action of, electors of President and Vice-President of the United States, or over returns or certificates of votes of such electors ; and that said Committee have power to send for persons and papers.”¹

On the 6th of December, the President sent to the two Houses a report signed by John Sherman, Edwin W. Stoughton, Eugene Hale, James A. Garfield, and others: all Republicans. It seems that these gentlemen had been requested by President Grant to proceed to New Orleans, and witness the count. The House indignantly laid the so-called report on the table.

In the House of Representatives, December 4th, Mr. Hewitt introduced the following resolution :

¹ *Cong. Rec.*, vol. v., part i., 44th Congress, pp. 2-39.

“Resolved, That three special Committees, one of fifteen members to proceed to Louisiana, and one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate recent elections therein, and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people, and whether the electoral votes of the said States should be counted.”

The rules were suspended, and the resolution was passed without debate or amendment, except on the last clause relating to the counting of the electoral votes.

On the following day, the Committees were appointed. Viewed in the light of the decision of the Electoral Commission, the appointment was a farce and an idle thing. Committees of both Houses proceeded to Columbia, New Orleans, and Tallahassee.¹ The two latter were the battleground. The battle had, however, already been fought before they arrived. In New Orleans and Tallahassee, the two returning boards had completed their work, and announced that the Hayes electors had been chosen by the people of Florida and Louisiana. In Florida, the board was composed of three, two Republicans and one Democrat. According to the law, they were “to canvass the returns of said election, and determine and declare who shall have been elected to any such office or as such member as shown by such returns. If any such returns

¹ The Senate Committees reported in favor of the Hayes electors; the House Committees in favor of the Tilden electors, except in the case of the South Carolina electors. The reader in search of details must examine the documents of the 2nd Session of the 44th Congress.

shall be shown or shall appear to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify, and shall not include such return in their determination and declaration; and the Secretary of State shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers.”¹

The board did not convene till the 27th of November. Returns from many precincts were rejected on account of the alleged illegal conduct of inspectors of election who were, in nearly every case, Republicans. The entire vote of the county of Manatee was rejected because Governor Stearns had failed to appoint a clerk to register the voters.²

In Baker County, very questionable, if not criminal practices, had been resorted to.³ On the 5th of December, the Hayes electors received certificates of their election from Governor Stearns. The electors met on the same day. One of them, F. C. Humphrey, it was said, held a government office on the 7th of November, and was appointed to fill his own vacancy. While they were in session, writs of *quo warranto* were served upon them, in behalf of the Tilden electors.⁴ The electors there assembled cast their votes for Hayes and Wheeler. The Supreme Court of the State of Florida, subsequently decided that the Tilden electors were the rightfully chosen persons, and the Legislature of the State, on January 26, 1877, directed the governor to issue certificates to the

¹ Section 4 of the Act of February 27, 1872, found in “Electoral Count of 1877,” p. 976.

² “Appleton’s Annual,” 1876, p. 300.

³ “Electoral Count of 1877,” p. 36.

⁴ “Appleton’s Annual,” 1876, p. 305.

Tilden electors, in accordance with the canvass, conducted according to the rules prescribed and adjudged as legal by the Supreme Court.¹ The Tilden electors had already met on the 6th of December, and voted. Three sets of electoral certificates were sent from Florida. Certificate No. 1: containing the votes for Hayes, with Governor Stearns' certificate; certificate No. 2: the votes for Tilden, accompanied by a certificate of the Democratic member of the returning board, and a statement that the governor's certificate had been demanded and refused; certificate No. 3: the votes for Tilden certified by the lately elected Governor Drew, and the act of the Legislature.

The most bitter and desperate dispute occurred in the State of Louisiana. According to the Act of 1872,² the returning board was to consist of five persons elected by the Senate, from all political parties. A vacancy was to be filled by the residue of the board, thus the board was a self-perpetuating body. Prior to November, 1876, the board consisted of four Republicans and one Democrat. The latter resigned. Frequent appeals were made to the returning board to fill the vacancy by appointing a Democrat and also to appoint a Democratic clerk. The petition was shamefully disregarded, and in the long and important sessions of this board, charged with the gravest responsibilities, the Democratic party had no representation. By section 43 of the law,³ the commissioners of election shall deliver duplicate lists of the results; one to the supervisor of registration of the parish; and one to

¹ The Act of Legislature is found in "The Electoral Count of 1877," p. 23.

² "Electoral Count of 1877," p. 841; also see H. R. Mis. Doc. No. 34, Part 2, 44th Congress, 2d Session, pp. 539-589.

³ *Id.*, p. 840.

the clerk of the district court of the parish, within twenty-four hours after the closing of the polls.

“It shall be the duty of the supervisor of registration, within twenty-four hours after the receipt of all the returns for the different polling places, to consolidate such returns, to be certified as correct by the clerk of the district court, and forward the consolidated returns, with the originals received by him, to the returning officers provided for in section 2 of this act, the said report and returns to be inclosed in an envelope of strong paper or cloth, securely sealed, and forwarded by mail. He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offences specified in section 26 of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes.”

According to section 26, a copy of such statement of any fraud, tumult, or violence, must be forwarded by the supervisor of registration to the returning board when he makes the returns of election in his parish, which copy of statement must be annexed to his returns of election. The returning officers were to canvass and compile the returns of the election in duplicate, from the statements of the commissioners of election. Section 3 lodges extraordinary power with the board; is full of details and must be strictly observed. “Whenever from any poll or voting place, there shall be received the statement of any supervisor of registration or commissioner of election, in form, as required by sect. 26 of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, . . . which prevented, or tended to prevent, a fair, free, and peaceable vote”; then the board was given authority to enter upon an examination, and if after such examination, they were convinced that the purity and freedom of any

election had been materially interfered with, they were to exclude the vote. The Tilden counsel laid great stress on the point that a foundation must be first laid for the examination. In 1874, a report of a committee consisting of George F. Hoar, William A. Wheeler, and William P. Frye was made, in which they construed the above sections :

“Upon this statute we are all clearly of opinion that the returning board had no right to do any thing except to canvass and compile the returns which were lawfully made to them by the local officers, except in cases where they were accompanied by the certificates of the supervisor or commissioner, provided in the third section. In such cases, the last sentence of that section shows that it was expected that they would ordinarily exercise the grave and delicate duty of investigating charges of riot, tumult, bribery, or corruption on a hearing of the parties interested in the office. It never could have been meant that this board, of its own notion, sitting in New Orleans, at a distance from the place of voting, and without notice, could decide the right of persons claiming to be elected.”¹ The board took a different view of its powers, and proceeded to throw out the votes from many polls where they claim to have found intimidation and violence. The result was to defeat persons whom, in the returns, they should have declared elected, and to elect persons who should not have been declared elected. Senator Edmunds had, moreover, used more emphatic language in the Senate in denunciation of the actions of the board. So much stress is laid upon the construction of this section, because it has been asserted and not denied, that the

¹ House of Representatives. Mis. Doc. No. 261, 43d Congress, 2d Session, p. 21.

supervisors of election, instead of sending the returns by mail, brought them in person to New Orleans; and that entire returns were rejected even when no protest or remarks accompanied the original returns.

Among the conclusions reached by the board in overruling the objections of the Democratic counsel were: that the board was not to be changed to suit shifting political organizations that might subsequently be made after the enactment of the law, and doubt was also expressed as to their power to question the eligibility of candidates.¹

A struggle of fruitless protests on the one side, and studied silence on the other, now began. Many returns were missing. It was claimed that they were in the custom house. Several thousand ballots bearing the names of only three electors were counted as for eight. The proceedings of the Hayes electors at their meeting have become very interesting. Two of the eight electors purposely absented themselves. They had held United States government positions on the 7th of November, and had subsequently resigned. The statute of Louisiana on the subject of vacancy was: "If any one or more of the electors chosen by the people shall fail, from any cause whatever, to attend at the appointed place at the hour of four P. M. of the day prescribed for their meeting, it shall be the duty of the other electors immediately to proceed by ballot to supply such vacancy or vacancies." The two missing electors were unanimously chosen to fill their own vacancies. The votes were cast; certificates were prepared by the electors. One was sent by mail, and one by a messenger to the President of the Senate, and one to Edward C. Billings, Judge of the United States Court for

¹ "Appleton's Annual," 1876.

the District of Louisiana. These facts should be borne in mind in the light of subsequent events. The South Carolina contest deserves attention only so far as the interposition of its State courts was invoked in the solution of the difficulties.

On the 17th of November the returning officers, all Republicans, were served with an order, signed by the Chief-Justice of South Carolina, to proceed ministerially with the returns, and certify the result to the court; and on the 22d a special order to show cause in relation to the presidential electors was issued, but the board had already, that day, issued certificates to the Hayes electors. On December 1st the court issued a writ of *quo warranto* in behalf of the Tilden electors against the Hayes electors. The latter, on the 5th, moved to dismiss the writ on the ground that they held under the Constitution and laws of the United States, and that the determination of the State canvassing board was final. The motion was afterwards granted,¹ but in the meantime a petition to remove the proceeding to the United States courts was denied.²

In the State of Oregon, the question of the effect of votes cast for a person holding an office of profit and trust was sharply presented. J. W. Watts, one of the three Republican candidates for electors, was on the 7th of November, 1876, the postmaster of La Fayette in Yam Hill County, Oregon, and resigned on the 13th of November. Did his resignation as postmaster remove the disqualification to be appointed an elector? The Republican party had carried the state of Oregon by over 1,000 majority. Was Oregon to cast but two votes for President? Was the Democratic candidate, having the next

¹ Opinion of court found in Mis. Doc. No. 31, Appendix p. 217, 44th Congress, 2d Session, part 1.

² *Id.*, Appendix p. 194.

highest number of votes to be the third elector? Did the two Republican electors possess the authority to select the third elector? Then what does the word "vacancy" mean?

Oregon now attracted attention. The Governor and Secretary of State of Oregon were Democrats, and naturally would construe the law, if possible, against the claim of the Republicans. A movement was now begun not only to prevent the giving of a certificate to Watts, but to give it to E. A. Cronin, the Democratic candidate. On the 2d of December, a protest¹ signed by a number of citizens was filed with the governor, claiming and insisting that the votes cast for Watts amounted to nothing—the same as if they had never been cast, and that the certificate of election should be given to the three qualified candidates having the highest number of votes.

The votes were canvassed on the 4th of December. The Republican electors now went through the form of protesting, but in vain. On the morning of the 6th, perhaps at the same hour as the Louisiana decision was rendered, the governor signed three certified lists of electors, in accordance with the above protest.² Then followed a scene which disgraces the American system of popular government. Between Cronin and the two eligible Republicans, irreconcilable differences of views existed. Cronin was afraid to surrender the governor's certificate, which he had obtained. Whether he refused to act with the Republicans or they with him it is difficult to learn, but the result appeared in two rival electoral bodies.

¹ "Appleton's Annual," 1876, p. 653.

² Gov. Grover's decision is found in the Miscellaneous Documents of the Senate of the United States, 44th Congress 2d Session," No. 44, in vol. iii., p. 413.

Cronin attempted to fill what he called vacancies, by appointing two persons in place of the Republicans. They met and cast one ballot for Tilden and two for Hayes. Odell and Cartwright deeming themselves the Electoral College of Oregon, organized as such, accepted the resignation of Watts as an elector, and thereupon chose him to fill the vacancy. Two sets of certificates were now on their way to Washington, each purporting to represent the State of Oregon.

The country was in a distracted state. Extremists on both sides were clamoring for the inauguration of their candidate. Partisan newspapers were exceedingly bitter. Petitions began to pour into Congress urging a settlement of the trouble by a fair and peaceable means. Congress was to be the battle-ground. What plan could be adopted? What party or statesman was equal to the occasion? The presidency was at stake. More than eight million men were watching the issue. The eyes of the world were turned toward the American Republic, and beheld with wonder the conduct of the people.

On the 14th of December, the following resolution passed the House of Representatives:

“ *Whereas*, there are differences of opinion as to the proper mode of counting the electoral votes for President and Vice-President, and as to the manner of determining questions that may arise as to the legality and validity of returns made of such votes by the several States ;

“ *And whereas*, it is of the utmost importance that all differences of opinion and all doubt and uncertainty upon these questions should be removed, to the end, therefore, that the votes may be counted, and the results declared by a tribunal whose authority none can question, and whose decision all will accept as final : therefore——

“ *Resolved* : That a committee of seven members of this House be appointed by the Speaker, to act in conjunction with any similar committee that may be appointed by the Senate, to prepare and report without delay such a measure, either legislative or constitutional, as may in their judgment be best calculated to accomplish the desired end, and that said committee have leave to report at any time.

“ *Resolved* : That a committee of seven members be appointed by the Speaker of this House to ascertain and report what are the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States, and that said committee have leave to report at any time.”¹

Three days later the Senate referred the above message to a select committee of seven, with “ power to prepare and report, without unnecessary delay, such a measure, either of a legislative or other character, as may in their judgment be best calculated to accomplish the lawful count of the electoral vote, and best disposition of all questions connected therewith, and a due declaration of the result, and that said committee have power to confer and act with the committee of the House of Representatives named in said message, and to report by bill or otherwise.” The Senate committee was composed of Messrs. Conkling, Edmunds, Frelinghuysen, Morton, Bay-

¹ This committee on January 12, 1877, reported among other conclusions, “ that in the counting of the electoral votes, no vote can be counted against the judgment and determination of this House of Representatives.” The Republican minority reported “ that in the absence of legislative provision on the subject or authoritative direction from the Senate and House of Representatives, the President of the Senate, upon opening the certificates, declares and counts the electoral votes for President and Vice-President of the United States.” (See *Cong. Rec.*, vol. v., part 2, p. 857, 44th Congress, 2d Session.)

ard, Ransom, and Thurman. Messrs. Hewitt, Hunton, Payne, Springer, Hoar, McCrary, and Willard represented the House. This joint committee presented its work in the shape of a report and a proposed bill on the 13th of January.¹

The action of Oliver P. Morton prevented a unanimous report, yet Mr. Morton was chosen a member of the Electoral Commission.

According to the proposed bill, the day on which the two Houses should meet was changed from the second Wednesday in February to the first Thursday in February. This was the first important change from the old regulations. Each House was to appoint two tellers, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes. In the case of objection to a certificate coming from a State which has sent only one certificate, the mode of procedure was substantially that prescribed by the bill of 1824: "No electoral vote or votes from any State from which but one return has been received, shall be rejected except by the affirmative vote of the two Houses."

The question of double returns, so long a theoretical matter of dispute, was now no longer so. Neither House could assume to select the lawful and valid vote of a State. An Electoral Commission was to be created, consisting of five Senators, five Representatives, and five associate justices of the Supreme Court of the United States.

The manner of making objections in the case of double returns, and the way of disposing of such objections, are as follows :

¹ The report is found in *Cong. Rec.*, vol. v., part 1, p. 713, 44th Congress, 2d Session.

The decision of the Commission was to stand unless overruled by the concurrent action of both Houses.

The bill forbade debate in joint-meeting, but permitted a debate of two hours in each House upon each objection or question.

The joint-meeting was not to be dissolved "until the count of electoral votes shall be completed and the result declared."

The power of either House to order an adjournment was limited.

The members of Congress and officers entitled to be present were to be seated in the same order as observed in 22d joint rule.

Section six refers to a subject which has attracted considerable attention: "Any right now existing under the Constitution and laws to question, by proceeding in the judicial courts of the United States, the right or title of the person who shall be declared elected, or who shall claim to be, President or Vice-President of the United States, if any such right exists," is not impaired or affected by the passage of the bill. The character of this work forbids a discussion of this important and intricate question. Such was the general outline of the bill. Seven Democrats and seven Republicans were designated to serve on the Commission. Though the report said, "The composition of the judicial part of the Commission looks to a selection from different parts of the Republic," two Democratic and two Republican justices were named at the outset. Who was to be the fifteenth member? According to the report the choice was left "to an agency, the farthest removed from prejudice of any existing attainable one."

He was to be selected by the majority of the four as-

sociate justices already named, from the remaining associate justices. It was generally understood that David Davis of Illinois, a justice of moderate and independent views, would be that man. The bill was presented to the Senate on the 18th of January.

The debate continued several days. Those in charge of the bill were determined to prevent the adoption of any amendment.

Mr. Morton offered this amendment: "Provided that nothing herein contained shall authorize the said Commission to go behind the finding and determination of the canvassing or returning officers of a State, authorized by the laws of the State to find and determine the result of an election for electors."

This amendment was amended by Edmunds, so as to read: "Provided that the said Commission shall have authority to go behind the finding and determination of the canvassing or returning officers," etc.

These amendments, which represented the views of both parties, were rejected, so that no judgment could by implication be placed upon the views of the Senate as to the question in dispute.

On January 24th, the bill passed the Senate by a vote of 47 to 17. Among the nays was only one member of the Democratic party, William W. Eaton of Connecticut. Among the sixteen Republican nays were seven Senators representing Southern States. Messrs Blaine, Morton, and Sherman were also of that number. The debate on this momentous occasion will compare favorably with the debates of 1830 and 1850. All the speeches were filled with ringing patriotism, and many of them with deep constitutional learning. Those that scorned all "compromise" are not so captivating. Senators Conkling, Ed-

munds, Frelinghuysen, Bayard, and Thurman were the conspicuous speakers in favor of the bill. The many conflicting opinions held by the two parties were mentioned. A decision must be reached. To the Commission was to be given the power of interpreting the law as it existed on the day of election. The Commission were to exercise their own judgment, subject, however, to the Constitution and the laws.

The following were the argument of the opponents of the bill: If the power to count the votes is lodged in the two Houses, it cannot be delegated. If the power is a general one, lodged in no particular department, then, in absence of legislation, the former presidents did not possess clear titles to their seats. It was denied that the Constitution authorized Congress "to find what were the constitutional votes of a State." Senator Morton delivered the leading speech in opposition. He compared the bill to the compromises of 1820 and 1850. He criticised the delegation of power, the uncertain character of the members of the proposed Commission. The bill, he thought, gave the Commission power to inquire whether the electors were eligible or ineligible as to their qualifications. In his opinion, "there is no time, there is no place to try the eligibility of electors," and it would, he said, be a gross violation of the spirit and letter of the Constitution, revolution, and the end of presidential elections under our system, not to accept as conclusive the final decision of the returning board of a State. He even went so far as to say that Congress must count votes cast for an alien!

The House received the bill on Jan. 25. The chances of its passage were facilitated by the fact that it received the support of almost all the Democrats in the Senate.

The attitude of the Southern members proved of great service in this time of national peril. The speeches of these men are full of appeals to avert a civil war. They said the South had enough of bloodshed in this generation.

Whoever desires a clear insight into the feelings of the conservative and law-abiding members of the Democratic party will do well to read the speech of Abram S. Hewitt of New York.

An alternative was presented to the party. The House must either allow the President of the Senate to count the doubtful votes for Hayes, or must "insist upon their constitutional right to participate in the counting of the votes, and the ascertainment and the declaration of the result." No fear of consequences could deter them from the performance of their duty. Would the man whom the House declared elected "have contented himself by asserting his rights upon paper, and be satisfied with the empty honors of a pronunciamiento"? Hewitt continued: "Such a course is scarcely to be expected from a race, which carried on the wars of the Parliament, which executed Charles I., deposed James II., threw off its allegiance to George III., and preserved the Union against attempted secession, at a countless cost of blood and treasure." As the nation was forced to choose, in the absence of a law, between successful usurpation or civil war, the committee had recommended a plan concerning which he says: "No man can predict who will become President by virtue of its operation, but all men can predict that it will be the man who is *lawfully* entitled to be President. If the law should violate the equity of the case, it is ground for the amendment of the law, but not of rebellion against its decrees."

The House by an overwhelming majority (191 to 86)

agreed to the bill, which was signed by President Grant, on January 29th, and became the law of the land.

The President, in view of the magnitude of the crisis, delivered a message stating his reasons for signing the bill. In his opinion, "the act affords a wise and constitutional means of escape." The President of the Senate has in no instance of doubt or dispute exercised the power of deciding. The bill secures a definite disposition of all questions in dispute in whatever aspect they may arise. He therefore signs the bill, because the nation "wants to be assured that the result of the election will be accepted without resistance from the supporters of the disappointed candidate."

CHAPTER XXI.

THE ELECTORAL COMMISSION.—SCENES IN CONGRESS.

A SOLUTION of the difficulty had been found. It would serve no useful purpose to enter into a discussion of the motives or opinions of those who voted to create the Commission. A great body of the American people, however, confidently thought that no narrow or technical rules would stand in the way of a free and full investigation, and that in that crisis an exception should be made if necessary. Yet it cannot be denied that the bill would not have passed if the Commission was known to favor any particular view. The issue was, therefore, left to chance.

On January 30th, the four justices, Clifford, Miller, Field, and Strong, selected Joseph P. Bradley to be the fifth member from the Supreme Court. On the same day, Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard were chosen by the Senate; and Representatives Payne, Hunton, Abbott, Hoar, and Garfield were, in like manner, chosen by the House.

The Electoral Commission began its sittings on Wednesday, January 31, 1877, in the room of the Supreme Court. A number of rules was adopted, among which, Rule V.,¹ when read in connection with the decisions of the Commission, seems inappropriate and unnecessary.

¹ "Electoral Count of 1877," p 7.

“Applications for process to compel the attendance of witnesses or the production of written or documentary testimony, may be made by counsel on either side.” “Depositions hereafter taken for use before the Commission shall be sufficiently authenticated if taken,” etc., etc.

On February 1st the two Houses met in joint-meeting. During the reading of the certificates from the first six States nothing happened to mar the solemnity of the proceedings. When the State of Florida was reached, the three sets of certificates received by the presiding officer were handed to the tellers. Objections were called for and quickly received. The Tilden objectors recited in detail the processes by which the Tilden electors acquired a legal title to their offices. They submitted in evidence, the report of the House committee on the Florida election; the Florida law which ordered a new canvass; the result of that new canvass; the certificate of the new governor, containing the names of the electors returned by the new canvass, and the record of the *quo warranto* proceedings in Florida. An additional objection was offered to the reception of the vote of Humphreys, a Hayes elector, on the ground of ineligibility. On the other hand, the Hayes electors contented themselves with the statement that the Tilden certificate was not accompanied by the certificate of the executive authority of the State, or by any valid authentication entitling the votes of the Tilden electors to be counted. All acts done after the day of voting were declared “null and void of effect.” All the certificates, papers, and objections were immediately sent to the Commission to be judged and decided. Excepting the case of an alleged ineligible elector, the chief and only question before the Commission was whether the United States government has the power to

go behind the decision of the final authority of a State. No extraneous matter was mingled with the fundamental question which was at that time agitating the minds of millions of freemen. One of the strongest evidences of the durability of our institutions was then seen.

The American people behaved in a manner that sheds undying honor upon them. Tranquillity reigned throughout the great Republic. Into the hands of fifteen men, most of them venerable with years, was entrusted the power of deciding a question that in other countries and at other times would have been settled amid the blood and carnage of the battle-field. The ablest men of the land were marshalled in legal array before this tribunal. On this day, February 1st, the names of the counsel and objectors in the Florida case were officially made known, Mr. Tilden's counsel were to be Charles O'Connor, Jeremiah S. Black, Lyman Trumbull, Richard T. Merrick, Ashbel Green, and William C. Whitney. His objectors were to be David Dudley Field and John Randolph Tucker. The claims of Mr. Hayes were to be upheld by William M. Evarts, Edwin W. Stoughton, Stanley Matthews, and Samuel Shellabarger, as counsel, and by John A. Casson and George W. McCrary, as objectors. George Hoadly, on the 8th, appeared as one of the Tilden counsel. Three certificates were now before the Commission. Which one was the lawful certificate? Which one represented the people of the State of Florida?

Two antagonistic principles were struggling for mastery. At the very outset, in a closed meeting of the Commission, certain remarks made upon a motion to print certain papers were the germs of the decision subsequently made.

It will be remembered that the act of January 29th de-

clares that "all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections," were to be sent to the Commission, but as to the reception and consideration of papers accompanying the objections as proof, the Commission was given discretionary power. Edmunds claimed that it was possible "under the statute, under which we are acting, that there may be no papers, lawfully and within the statute, accompanying an objection."¹ This strict construction was opposed by Thurman in these words: "If we have received papers from either of the Houses, which, in the estimation of the Houses it is proper to send to us, it seems to me we must look at them and see whether they are competent and pertinent." No definite conclusion was arrived at, the question was postponed, and the Commission adjourned.

February 2d was devoted to the hearing of the objectors on each side. In behalf of the Tilden electors it was argued that the Commission had power "to take all the pertinent evidence; that is to say, all evidence that tends to prove the fact," unless some positive law forbids the exercise of such power.² To form a judgment, certain facts must be known; to prove those facts all pertinent evidence must be considered. The authority to inquire into the title of the President implies the right to inquire into the truth, notwithstanding a certificate against the truth. This argument seems to be strongly stated: "The elective function is in the State; the determining function is in a returning board. Wherever, under

¹ "Electoral Count of 1877," p. 30.

² See exhaustive analysis of the powers of Congress in "The Speeches, Arguments, and Papers of David Dudley Field," vol. ii., pp. 88 and 108. D. Appleton & Co., 1884.

the name of determining and deciding who is elected, the board really elects, then it is a usurping power, and it has transcended its authority ; it has acted *ultra vires*, and its act must be declared void by any tribunal before whom its action comes for adjudication."

The decision of the court of Florida must apply to the case of presidential electors. The court interprets a law ; all acts done contrary to the law are void.

The Hayes objectors in reply, took a firm stand against the idea of recounting "popular votes" and planted themselves upon this proposition : If the Constitution and laws of the United States in manner, in time, in substance, so far as shown by the duly certified result, are conformed to, the determination of the State is formed where the State authority concludes.

McCrary, who had made a special study of such questions, quoted extensively to show that the writ of *quo warranto* is of no avail after the function of the office of elector had been exercised, and the elector had ceased to be, and was *functus officio*. From 55 Illinois Reports, *People versus Whitecomb*, he read :

"This writ is generally employed to try the right a person claims to an office, and not to test the legality of his acts."

The next two days of proceedings were occupied by counsel in speaking upon the general merits of the case. As has been intimated, the Florida case was made a test, to which were devoted the labors of most distinguished lawyers. At the very commencement, the Tilden counsel were confronted with the declaration of one of the Hayes counsel : "I object to the evidence now offered." After this objection had been made, it was ordered that counsel on each side be allowed two hours to discuss the point at

issue. Mr. Merrick made some very strong arguments in favor of the admissibility of evidence.¹

“What is to be counted? It is the votes; and if the votes are cast by persons not duly appointed electors under the law of the State, they are not votes, and when you count them, you count something the Constitution did not authorize you to count.”

“The disqualification operates upon the power given to the State, and disables the State from appointing such persons rather than disables the person from holding the office.”

Hence, he argued, it must be ascertained what are *votes*. For determining what are true votes “any legitimate evidence is proper and competent evidence before this tribunal.” Much stress was laid upon the action of Congress appointing committees of investigation before the counting of the votes cast in the elections of 1872 and 1876.

The right to take testimony going behind the certificates must exist primarily and originally in the two Houses of Congress, or it must exist in the State to correct its own certificates, or impeach for fraud and falsehood. On the same side, at the next sitting of the Commission, Charles O'Connor delivered a masterly argument. The denial of the right of the President of the Senate to count the votes, implies a preliminary inquiry as to what are the “legal votes” before the ministerial act of counting begins. Mr. O'Connor, on general principles of law, demanded a full investigation in order to reach the ends of justice. In regard to *de facto* officers, he explained that individuals who had recourse in business affairs to the existing authorities are entitled to protection, but “the officer himself, however, is never protected.” This view of the case was

¹ “Electoral Count,” p. 92.

combated by Evarts and his assistants. These gentlemen earnestly advocated the reserved rights of the States. According to Mr. Matthews, the question was: "Which set of electors charged with that duty has become entitled to, and clothed by the forms of law with, actual incumbency and possession of the office?"¹

Mr. Stoughton said:

"If we go behind that finding, we disregard the determination of a tribunal which the State of Florida has declared by her Legislature to be empowered to determine what persons she has constituted to declare her will in the electoral college; for it is her will as a sovereign State—wise or foolish—which is to be thus expressed."²

In Mr. Evarts' opinion, the vote of a disqualified elector must stand "unchallengeable and unimpeachable in the count," if the fact has not been discovered by the State. He also with great ability questioned the expediency and denied the constitutionality of an act of Congress which conferred judicial powers upon the Commission.

We have heard the arguments brought forward, in Congress and before the Commission.³ Let us consider the action of the Commission in hearing and determining the case.

On February 3d, the Commission ordered that counsel should discuss the question of the admissibility of evidence other than what was presented by the President of the Senate, and also discuss "what is the evidence now before the Commission." The 7th of February was the most important in the proceedings of the Commission. A decision of the case was practically rendered. On this day opinions

¹ *Id.*, p. 106.

² *Id.*, p. 109.

³ See masterly brief of Wm. C. Whitney, one of the Tilden Counsel. "Electoral Count of 1877," p. 760.

were delivered by the Commissioners, which were not essentially modified in the subsequent cases. Justices Clifford and Field unequivocally declared their desire to go behind the finding of the returning board. The same opinion was held by the four other Democrats, two of whom, Bayard and Thurman, made some very pertinent remarks.

As Senators, they were given several volumes of reports to guide their judgment during the debate in each House upon an objection to a single return. As Commissioners in the case of disputed returns, must they examine only the papers received from the President of the Senate? A State, appointing a forbidden person, commits as great a breach of the Constitution as if she appoints more persons than the Constitution permits.

The decisions of the United States Supreme Court, in regard to the effect of a decision by the Supreme Court of a State must compel the Commission to take notice of the decision of the Supreme Court of Florida, declaring that the returning board had acted contrary to the law as interpreted by the court. The Republican members of Congress who sat in the Commission showed by their first remarks that their views had not undergone any change. In their opinion, they were sustained by commissioners Miller, Strong, and Bradley. The latter, however, expressed a willingness to receive evidence as to the eligibility of one of the electors, although he thought that "the official acts of officers *de facto*, until they are ousted by judicial process or otherwise, are valid and binding."

The critical hour had now arrived. The momentous question was submitted to the vote of the Commission. Party lines were closely drawn on the first important motion, that no evidence will be received "except such as

relates to the eligibility of one of the electors." Eight Republicans voted yea, and seven Democrats voted nay. On a second motion that "the commission will receive evidence relating to the eligibility of one of the persons named in Certificate No. 1, as elector" a vote was recorded which can only be justified on the strictest grounds of party necessity. Seven Republicans by their votes declared the government was utterly powerless over the action of the States. Commissioner Bradley, however, voting with the Democrats, caused the adoption of the motion.

On February 8th, the Commission heard evidence upon the eligibility of Humphreys, and on the following day a final decision was reached. The ground of the decision was:

"That it is not competent under the Constitution and the law, as it existed at the date of the passage of said act, to go into evidence *aliunde* the papers opened by the President of the Senate in the presence of the two Houses, to prove that other persons than those regularly certified to by the governor of the State of Florida, in and according to the determination and declaration of their appointment by the Board of State Canvassers of said State prior to the time required for the performance of their duties, had been appointed electors, or by counter-proof to show that they had not, and that all proceedings of the courts or acts of the Legislature or of the Executive of Florida, subsequent to the casting of the votes of the electors on the prescribed day, are inadmissible for any such purpose. As to the objection made to the eligibility of Mr. Humphreys, the Commission is of the opinion that, without reference to the question of the effect of the vote of an ineligible elector, the evidence does not show that he held the office of Shipping Commissioner on the day when the electors were appointed."¹

¹ "Electoral Count," p. 199.

The decision was communicated to the President of the Senate and the Speaker of the House. The two Houses met at 1 P.M., on Saturday, February 10th, and heard the decision announced, the decision which practically determined the contest.

David Dudley Field submitted an objection to the decision. The sixth and seventh grounds of the objection presented the Tilden case in very strong and favorable light.

In the words of the objection: "Said Commission refused to recognize the right of the courts of the State of Florida to review and reverse the judgment of the returning board or Board of State Canvassers, rendered through fraud and without jurisdiction, and rejected and refused to consider the action of said courts after their decision that Charles H. Pearce, Frederick C. Humphreys, William H. Holden, and Thomas W. Long were not entitled to cast the electoral vote of Florida; which said decision was rendered by a court of said State in a case lawfully brought before said court, which court had jurisdiction over the subject-matter thereof, and whose jurisdiction over the said Charles H. Pearce, Frederick C. Humphreys, William H. Holden, and Thomas W. Long had attached before any act was done by them as electors."

The Senate then withdrew. In that body, the decision was forthwith sustained, but the House ordered a recess till Monday, February 12th, at 10 A.M., at which hour, the House voted to overrule the decision. On the assembling of the Houses, the President of the Senate ordered the four votes to be counted for Hayes and Wheeler. Nothing further occurred to disturb the count until the State of Louisiana was reached. The presiding officer significantly remarked: "The Chair opens a certificate from the

State of Louisiana, received by mail, no corresponding one by messenger.”¹ This certificate was for Hayes. Then after the Tilden certificates by mail and messenger had been opened and read, he continued: “The Chair having opened another certificate from the State of Louisiana, received by messenger.” . . . and then “a corresponding certificate by mail is also handed to the tellers.” A dark chapter of fraud and forgery lies in those few words.

It has subsequently transpired that the messenger, Thomas C. Anderson, who brought the Hayes certificate to the President of the Senate, did not “deliver the same,” but hurriedly returned to New Orleans. The certificate was irregularly endorsed and was liable to be rejected.² Anderson on his return to New Orleans informed Kellogg of the condition of affairs.

What was to be done? Positive unquestioned facts will now be stated and the reader will draw his own inference.

A new certificate was prepared, and two of the electors, Aaron B. Levisse and Oscar Joffrion, being absent from New Orleans, their names were forged. The Governor’s certificate to the new electoral certificate was still of the old date. One of these certificates was sent by mail to the President of the Senate, and another by messenger. An attempt to extract the old certificate from the United States District Court of Louisiana failed.³ The new certificate was an improvement on the old one. The President and Vice-President were voted for in distinct ballots, and the names of the electors were on the envelope enclosing the certificate. This forged certificate, though

¹ *Id.*, p. 205.

² H. R. Mis. Doc., No. 31, 45th Cong., 3d Sess., p. 539.

³ *Id.*, p. 1382 and 1105.

presented to Congress and the Electoral Commission, has never been printed in the official records of the proceedings at that time. A second Kellogg certificate appears in "The Electoral Count" and the "Proceedings of the Electoral Commission," but by careless if not criminal conduct it is only a copy or duplicate of the genuine first certificate. It is thought by many that a forged Kellogg certificate was printed as the first and third certificates for the use of the Commission. A burlesque certificate in favor of Peter Cooper was opened, but created a laugh even on that solemn occasion, and was suppressed.¹ Formal objections were made to the two Kellogg certificates by the Democrats, and one objection to the McEnery certificate by the Republicans. All the certificates, papers, and objections were immediately sent to the Commission. It was late in the afternoon. Justice Field moved that these papers be printed. The genuine but imperfect certificate of Kellogg was numbered "N. C. No. 1."; McEnery's, "N. C. No. 2."; and the forged Kellogg certificate, "N. C. No. 3."

After some discussion the Commission adjourned until the following morning at 11 o'clock, February 13th. During that day and the two succeeding days the battle raged. All the intricacies of a confused system of statute law were discussed. On the Tilden side could be found the keen analysis of Carpenter, the earnest and indignant protest of a Trumbull and a Campbell. On the Hayes side the close reasoning of Evarts and the learning of Shellabarger. The charge of fraud in the returning board was only answered by the counter charge of intimidation

¹ "A Political Crime," by A. M. Gibson. A detailed account of the proceedings in Florida and Louisiana from the Tilden standpoint is found in this book.

at the polls. The Tilden counsel boldly affirmed that every sheriff, every constable, every police officer, every supervisor of registration, and every commissioner of election, and many thousand special officers were all Republican appointees, as well as the United States marshals; yet not an arrest, they said, was made throughout the State on election day, for crimes against the purity of the ballot box. Numerous offers of proof were made. On the 16th the Commission met with closed doors. The session lasted all day; a lengthy debate took place. Each member of the Commission spoke in advocacy of the claims of his party. Mr. Thurman said:

“They, the Hayes electors, were declared by the returning board to be appointed on the very day on which they voted, and it was manifestly impossible in the few hours that elapsed between that declaration and the casting of their votes to oust them by judicial proceedings. To hold, then, that they had color of title, were electors *de facto*, and that Congress is bound to count their votes, is to declare that no matter by what usurpation of power, fraud, or corruption a man may be declared by a returning board to be an elector, and no matter how ineligible he may be to receive an appointment as elector, or to be an elector *de jure*, yet, unless he be ousted before he casts his vote for President (though to do so is manifestly impossible), that vote must be counted; and neither the State nor Congress can right the wrong or remedy the evil. I utterly dissent from such a proposition. In my humble judgment, it is destructive of the rights of the States, of the powers of Congress, of constitutional provisions, of the principles of justice, of purity in elections, and of popular rule.”

The contrary view was taken by Mr. Garfield:

“The State of Louisiana had empowered the returning board to determine and declare who had been appointed

electors, and having provided no appeal from its decision, its action became the final and conclusive determination of the State ; and neither Congress nor this Commission has any authority to inquire whether there was fraud or error in the process by which the determination was reached.”¹

The taking of the vote of the Commission on the admission of evidence consumed the greater part of the 16th of February. Fourteen times the roll was called, and fourteen times the same result was announced—8 to 7. The Commission decided that evidence was not admissible to show that affidavits upon which the returning board acted “were falsely fabricated and forged by certain disreputable persons under the direction and with the knowledge of said returning board.”

On the evening of February 16th, the decision was announced that Hayes and Wheeler were entitled to the eight votes of Louisiana. The Florida decision was reaffirmed, with the additional statement that no evidence can be received to prove “that the determination of the said returning officers was not in accordance with the truth and the fact.” To the offers to prove that certain of the Hayes electors held positions under the United States government, and others under the State government, the answer was given “that it was not competent to prove that any of said persons so appointed electors held an office of trust or profit under the United States at the time when they were appointed, or that they were ineligible under the laws of the State.”

The next morning the two Houses were formally notified that the President of the Senate had received the Louisiana decision. The House informed the Senate that

¹ See note A at end of this chapter.

it would meet that body on the following Monday to proceed with the count. At the appointed time, the two Houses met and heard the decision read. Elaborate objections were offered, and the Houses separated. The House, being in no humor to deliberate, adjourned to the next day, when the joint session was resumed. The Louisiana votes were counted for Hayes and Wheeler against the protest of the House of Representatives.

On February 21st, the Oregon case was sent to the Commission. Judge Hoadly, then of Cincinnati, appeared as one of the counsel for Tilden. His argument in favor of counting the vote of Cronin was forcible and logical, and from a legal standpoint, appears to many to justify the action of Governor Grover. While the unfairness of certifying to the election of a minority candidate detracted from that portion of his argument some of its force; yet, on the other branch, namely, the inability of Postmaster Watts to hold the office of elector, the argument cannot be successfully controverted.¹ His resignation of the office of postmaster could not free him from the disability to be chosen an elector by the electoral college to fill an alleged vacancy. For the clause in the Constitution authorized the presumption that his official position contributed to his election. The action of the people of Oregon in choosing a disqualified person resulted in a failure to elect. The Tilden objectors, Kelly and Jenks, completely changed their position of attack. Without admitting as individuals the justice of the former decisions, they claimed the right as law-abiding citizens to ask the Commission to make the same strict construction of the law in the present case. How surprised the Commission must have been to hear the Tilden objectors talking in this way :

¹ Brief in "Electoral Count of 1877," page 778.

"It matters not how they came to that conclusion. The presumption of law will always be that it was upon sufficient evidence. They had evidence of the ineligibility of the candidates, and they decided upon that point."

The Governor and Secretary of State were, they claimed, the only medium of communication between the State and the government.

The Hayes objectors found it necessary to ask the Commission to construe the statute liberally. The returning board had no power to reach back of the returns, and the question of eligibility is judicial. (In the Florida case, it was claimed that judicial process should not interfere in a political transaction.) The Commission should liberally interpret the Oregon law in regard to a vacancy in the electoral college. Vacancy under the designation "or otherwise," should include a failure to elect. The Commission, by a unanimous vote, reversed the act of Governor Grover, in so far as he attempted to make Cronin an elector; but the Commission, by the usual vote of eight to seven, considered as *ultra vires* the action of the governor in withholding the certificate from Watts, and also by the same vote it was decided that, "according to the Oregon statute, whoever received the highest number of votes, as determined by the ministerial act of counting, was deemed elected." The Oregon votes were counted on February 24th.

On the evening of the 26th,¹ the South Carolina certificates were sent to the Commission. The case attracted little attention. The general impression prevailed that Governor Hayes had carried the State of South Carolina by an unquestioned majority. A rival electoral college

¹ On account of the illness of Senator Thurman, the Senate appointed Francis Kernan, of New York, in his place as a member of the Commission.

had, however, been organized. The Tilden counsel, in pathetic tones, bewailed the action of the Commission, and denounced as unconstitutional the sending of troops and marshals into a State.

Congressman Hurd, of Ohio, made the following curious argument :

President Grant's proclamation of October 17, 1876, proved that insurrection existed in the State ; the report of the Senate committee proved violence and outrages at the polls ; and the House committee discovered that intimidation was practised upon the qualified voters by soldiers and marshals. This argument was met by Morton, in a motion which was adopted, that " evidence cannot be received to show that disturbances existed at the time of election, which may have interfered to a greater or less extent with the freedom of election at the polls in said State." This point was covered in the decision of the Commission. The United States government has no power " to inquire into the circumstances under which the primary vote of the electors was given."

During the progress of the count, objections were offered to certain votes from Michigan, Nevada, Rhode Island, Pennsylvania, Vermont, and Wisconsin, on the ground that they were cast by persons not duly appointed. In the first three cases the objections were not sustained in either House. In Rhode Island, the people had voted for one George H. Corliss, who held an office of trust under the United States. The General Statutes of that State contain two provisions for completing the number of electors. One reads :

" If any electors, chosen as aforesaid, shall, after their said election, decline the said office, or be prevented by any cause

from serving therein, the other electors . . . shall fill such vacancies.”¹

The other is :

“ If, by reason of the votes being equally divided, or otherwise, there shall not be an election of the number of electors to which the State may be entitled, the governor shall forthwith convene the General Assembly at Providence for the choice of electors to fill such vacancy by an election in grand committee.”²

Corliss had said that he would not act as elector. The governor submitted to the Supreme Court of that State a number of questions, one of which was, whether a candidate (one disqualified by holding an office of trust or profit) for the office of elector, who receives a plurality of the legal votes given, and declines said office, creates such a vacancy as is provided for in Section 7, Chapter ii., of the General Statutes. The court answered the question in the negative, and said :

“ Before any person can decline under this section he must first be elected, and no person can be elected who is ineligible, or in other words incapable of being elected.”

The court further answered that there was no election, and therefore the grand committee might elect the elector, which was then done.³ The Pennsylvania statute as to vacancy was : “ If any such elector shall die, or from any cause fail to attend at the seat of government at the time appointed by law, the electors present shall proceed to choose,” etc. Daniel J. Morrell was a candidate for the

¹ Gen. Stats., Ch. ii., Sec. 7. See Sect. 133 of Revised Statutes of the United States.

² Gen. Stats., Ch. ii., Sec. 5. See Sect. 134 of the Revised Statutes of the United States.

³ In re Corliss, 11 R. I. Reps., 638.

office of elector of that State, and held an office of trust under the United States. The electoral college chose Henry A. Boggs as an elector of Pennsylvania in Morrell's place. The Senate resolved that the vote should be counted. The Wisconsin electoral votes seem to present the question squarely, if the position of pension surgeon is an office of trust or profit under the United States. Daniel L. Downs was such on the day of election and on the day when he cast a vote as a Wisconsin elector.

The vote was counted.

From the rendering of the Florida decision, a disposition was manifested by a number of Representatives to delay the count, or, as it was termed, "to filibuster." At first, they were joined by the great body of the Democrats in voting to adjourn on certain occasions, until the following day. At the counting of the Vermont votes, a circumstance occurred which might have led to serious trouble. Many members alleged that President Ferry had in his possession double returns from that State. It was the evening of the 28th of February; on that day the South Carolina votes had been counted. President Ferry said that only objections to the Vermont certificates could be received. A resolution of Representative Springer was not entertained. The Chair even ruled its reading to be out of order, and amid cries of "Order!" and the statement of the presiding officer, "The Chair will be compelled to direct the member to be seated," Mr. Springer said: "Mr. President, I have rights upon this floor which you cannot take away from me—rights which were given *me* by the people I have the honor to represent. I desire to submit a question arising under the Electoral Act, and now ask that it be entertained by the Chair."¹ Then an appeal

¹ "Electoral Count," p. 713.

was taken. The Chair refused to entertain the appeal. A shout of applause went up from the Republican members. Finally, Springer yielded. Formal objections to the one certificate were then offered. Another but futile effort was now made to have the second return read, and both returns sent to the Electoral Commission. The following facts were brought to the notice of the joint-meeting; a certificate of Amos Aldrich, a Tilden elector for Vermont, was deposited in the United States District Court for Vermont. A similar one was sent to Mr. Hewitt, who, on being informed that no such certificate had reached the presiding officer, tendered it to him. The certificate was not accepted. Mr. Hewitt then formally handed it to President Ferry, in joint-meeting. The session of the following day, March 1st, was a critical one. In the House, much feeling and indignation were expressed at the conduct of President Ferry. Speaker Randall, in his calm but forcible way, stated "that in his opinion, a grave mistake and wrong had been committed by the refusal to receive, even for opening and reading for information, the package." It had transpired that the secretary of the Senate had obtained possession of the package, and had refused to surrender it. A resolution requiring the President of the Senate to produce the certificate, and requesting the Senate to make a like order, ended with these words: "And until such order be made, the House will not be ready to meet the Senate to proceed with the count of the electoral vote." The House, by a vote of 148 to 116, refused to so order. Finally, a simple motion was made, that "the disputed Vermont vote" be not counted.

During the debate upon the Wisconsin objection, a member endeavored to submit, as a question of privilege, a resolution for the immediate election of a President by

the House of Representatives. A motion to adjourn till the next day, March 2d, was lost, 99 to 148. At five minutes past four o'clock in the morning of March 2d, the count was completed.

The result was announced :

For Rutherford B. Hayes	-	-	-	-	185
For Samuel J. Tilden	-	-	-	-	184

The long agony was now over. The House of Representatives spread on its records a solemn protest against the decision of the Electoral Commission, and a declaration that Samuel J. Tilden was the rightfully chosen President of the United States.¹ The patriotism of the American people had never been more severely tried. The conduct of the standard-bearer of the Democratic party at that critical time has won the admiration of the world. One word from him would have prevented the formation of the Electoral Commission.

On the 5th of March, 1877, the public inaugural ceremonies took place. The following cabinet was selected, viz. : William M. Evarts, of New York, Secretary of State ; John Sherman, of Ohio, Secretary of the Treasury ; George W. McCrary, of Iowa, Secretary of War ; Charles Devens, of Massachusetts, Attorney-General ; Richard W. Thompson, of Indiana, Secretary of the Navy ; Carl Schurz, Secretary of the Interior ; David McK. Key, of Tennessee, Postmaster-General.

The policy of the late administration toward the local commonwealths was abandoned ; and by the first of May, 1877, the State governments of Louisiana and South Carolina came under the control of the Democratic party. How and why this policy was changed is a political mys-

¹ McPherson's " Handbook of Politics," 1878, p. 33.

tery. The political literature of the next four years is made up of controversies growing out of this election. Many huge volumes of Congressional debates and reports attest the interest taken in the controversy. Where is the tribunal to try the title to the presidency when the office is filled by an actual incumbent? The statesmanship of the future must answer the question. On the 14th of June, 1878, the House of Representatives, by a vote of 235 to 14 (42 not voting), resolved :

“ That the two Houses of the Forty-fourth Congress, having counted the votes cast for President and Vice-President of the United States, and having declared Rutherford B. Hayes to be elected President, and William A. Wheeler to be elected Vice-President, there is no power in any subsequent Congress to reverse that declaration, nor can such power be exercised by the courts of the United States or any other tribunal that Congress can create under the Constitution.”

NOTE A.

Joseph Story ¹ made the following remarks in the Massachusetts Constitutional Convention of 1820 in opposing a motion to insert in the proposed constitution a direction to the State Legislature concerning the mode of appointing electors.

“The discretion thus given to the Legislatures cannot be taken away. They might still exercise it, and would be bound so to do notwithstanding the provision in debate is made a part of our Constitution. The gentleman suggests that the Congress of the United States have no right to inquire into the manner in which electors are chosen, and therefore that we may safely adopt the mode now prescribed. Sir, I doubt exceedingly this proposition in the latitude in which it is stated. I do not know that Congress have ever decided that they have no authority to inquire behind the returns made to them of the electors. Cases of fraud or of unconstitutional appointments of electors may arise in which it might be fit and proper, and perhaps necessary for the public safety, to make this inquiry.” ²

¹ The learned jurist, and justice of the Supreme Court of the United States from 1811 to 1845.

² “Journal of Debates and Proceedings on the Revision of the Constitution of Massachusetts, 1820,” published at Boston, 1853.

CHAPTER XXII.

CAMPAIGN OF 1880.—THIRD TERM.—DEATH OF GARFIELD.—MEANING OF “INABILITY.”

THE preliminary campaign of 1880 presented to the American people a question of the greatest importance. Shall the office of President be filled for three terms by the same man?

This subject occasioned much ill-feeling at the time. The following passage from the jubilee address of John Quincy Adams echoed the public sentiment of his time, and represented fully the views of a generation forty years later.¹

“The example of Washington of retiring from the Presidency after a double term of four years, was followed by Mr. Jefferson, against the urgent solicitation of several State Legislatures. This second example of voluntary self-chastened ambition, by the decided approbation of public opinion, has been held obligatory upon their successors, and has become a tacit subsidiary constitutional law. If not entirely satisfactory to the nation, it is rather by its admitting one re-election than by its interdicting a second.”

In defiance of this sentiment, a section of the Republican party, under the leadership of a Senatorial triumvirate, advocated the nomination of General Grant for a third term, and with a persistency and devotion worthy of a better cause, clung to the name of Grant in the

¹ “The Jubilee of the Constitution.” New York, Samuel Colman, 1839.

national convention of their party, held in Chicago, even to the last ballot. A gallant contest was waged against the unit rule in that convention. The friends of James G. Blaine claimed that the votes of individual delegates should be counted for the man for whom they were cast. The appeal was successful. The danger of a third term was over. He who broke the power of the triumvirate, though not securing the prize, had a great share in shaping its final action.

James A. Garfield was the nominee of the convention for President and Chester A. Arthur for Vice-President. The Democratic party met in Cincinnati on June 23d, and nominated Winfield Scott Hancock for President and William H. English for Vice-President. Samuel J. Tilden absolutely declined to accept the nomination.¹ Bright were Hancock's prospects until the tariff question was sprung into the canvass. The "tariff for revenue only" platform of the Democracy was skilfully used to spread terror and consternation in the great manufacturing centres of the country, and the appearance in the field of Gen. Grant and Senator Conkling showed the unity in the Republican ranks. The contest was practically decided by the result in the October elections in Ohio, and Indiana. The Republicans carried both States. New York, in November, gave Garfield a plurality of votes over Hancock and insured his election. The decisive result of the election made the settlement of the Georgia trouble a matter of indifference. The Georgia electors had repeated, in this year, the blunder of 1868. They had cast their votes on the 2d Wednesday of December.² Prior to the

¹ Samuel J. Tilden to Daniel Manning, in "The Writings and Speeches of Samuel J. Tilden," edited by John Bigelow, vol. ii., p. 502. Harper Bros., 1885.

² The day prescribed by the "Confederate States Constitution."

count of the votes in February, the joint committee reported a resolution providing for the alternative counting of the Georgia votes. In California, five Hancock electors were chosen, while one Garfield elector was chosen. The cause of this loss of one Hancock vote was owing to the refusal of many Californians to vote for elector Terry, the slayer of Dave Broderick. Yet Hancock was made to suffer. The electoral system thus works an injury. The electoral votes were peacefully counted. Garfield and Arthur carried all the Western and New England States, possessing 213 electoral votes. Hancock and English received the entire electoral vote of the Southern States, 138 in all, which, added to the 5 of California and 3 of Nevada, and 9 of New Jersey, made up the 155 electoral votes.

Garfield was inaugurated on the 4th of March, 1881. The voice of his party as well as his country called James G. Blaine to the chair of Webster and Seward. William Windom was appointed Secretary of the Treasury; Robert T. Lincoln, of War; William H. Hunt, of the Navy; Samuel J. Kirkwood, of the Interior; Thomas L. James, Postmaster-General, and Wayne McVeagh, Attorney-General.

Sad and instructive is the story of Garfield's short but eventful administration. Strife and ambition prevailed within the party as never before. Ingratitude and bad faith were openly charged. The resignation of the Republican Senators from New York disclosed to the country the bitterness of the controversy. All eyes were now turned to the city of Albany.

Would the New York Legislature return the two Senators? The question was still unanswered on the 2d day of July, 1881, when the startling news flashed across the

wires, that President Garfield had been shot by an assassin. The true character of the American people was never more signally shown. Sorrow and indignation were stamped upon every brow. The nation had been assailed in the person of its Chief Executive. Then followed the long and weary days of suffering borne by the heroic patient, the favorable and unfavorable bulletins, the constant and devoted attention of kind and loving friends, the warm messages of sympathy from every part of the habitable globe, and at last the dreaded end on Sept. 19, 1881.

The manifestations of sorrow exhibited at his death show how true are the hearts of the people to their Chief Executive.

The succession to the presidency now devolved on Chester A. Arthur, who took the oath of office in the city of New York, before the Hon. John R. Brady, a Justice of the New York Supreme Court, on the 20th day of Sept. Lincoln alone remained in the cabinet, which was entirely reorganized. Frederick T. Frelinghuysen succeeded Mr. Blaine, Charles J. Folger took the place of Windom, and William E. Chandler that of Hunt, Henry M. Teller succeeded Kirkwood, James gave way to Timothy O. Howe, and Benjamin H. Brewster became Attorney-General.

The long illness of President Garfield threatened the country with many complications. His death removed the present necessity of their discussion. When does "inability to discharge the powers and duties" of the presidential office occur?¹ Does a *temporary* inability authorize the Vice-President to assume the office, or must the inability be permanent in its nature? Who is to decide the delicate and momentous question of "in-

¹ See *North American Review*, Nov., 1881, for a discussion on "Presidential Inability."

ability." No graver question could confront a people. If a temporary derangement of reason arose, would the Vice-President continue to exercise the powers and duties of the President after the return of reason to the President? On none of these questions does unanimity prevail. The whole matter is complicated. Another defect in the law was seen on the accession of Mr. Arthur. There was no President *pro tem.* of the Senate, nor Speaker of the House. The action of Mr. Arthur in not withdrawing from the Senate for a sufficient time to allow a President *pro tem.* to be chosen, was widely criticised. The next and last officer designated by law to succeed, had been, up to the 4th of March, Speaker Randall, and a new Congress began on that day. If a deadlock took place in the Senate, and the House was unable to organize, the condition of the country would have been extremely critical, if both Garfield and Arthur were incapacitated from performing their duties, or Mr. Arthur had died while holding the office of President.

The death of Vice-President Hendricks on Nov. 25, 1885, brought out forcibly the need of a change in the law.¹

¹ The act of January 19, 1886, has remedied this defect.

CHAPTER XXIII.

CAMPAIGN OF 1884.—LEGISLATION OF THE FORTY-NINTH CONGRESS.

THE Republican National Convention of 1884 was held in the city of Chicago on the 3d of June. Its nominees were James G. Blaine of Maine and John A. Logan of Illinois.

The Democracy met on July 8th, in the same city, and nominated Grover Cleveland of New York and Thomas A. Hendricks of Indiana.

A convention of so-called temperance advocates held their usual presidential convention in the city of Pittsburgh, and nominated, on the 24th day of July, St. John, of Kansas, for President, and William Daniel, of Maryland, for Vice-President.

The National Labor and Greenback party met in the city of Indianapolis on the 27th day of May, and selected as their nominees, Benjamin F. Butler and Absalom M. West for President and Vice-President.

Never was a presidential election more hotly contested. The people themselves took an active interest in the fight. The principle of party allegiance was put to the severest test. The presence in the field of Butler and St. John caused the party managers much uneasiness. The canvass was disgraced by personalities of every kind. The regular nominees were supported by their adherents with a warmth and devotion seldom equalled. The with-

drawal of large numbers from each party, only served to animate the party to stronger exertions. The friends of St. John aimed at the defeat of Blaine. The Butler men hated Cleveland so much that at the last moment they decided to throw their strength in favor of Blaine. The Butler men formed coalitions in some States with the Democrats, and in other States with the Republicans.

The week ending October 24th found the campaign drawing to a close with the chances in favor of Mr. Blaine. Fear of tariff changes and disaffection in the city of New York were threatening the final overthrow of the Democratic party. Then followed in rapid succession the "Rum, Romanism, Rebellion" episode, the banquet in the evening of the same day, the Cleveland parades on Saturday afternoon in the city of New York, surpassing any former demonstrations of a similar character. All foreshadowed a close struggle at the polls. The labors of Blaine in the canvass were extraordinary. He assumed many of its burdens, and his power of endurance was displayed in a manner that extorted the admiration even of his foes. The candidacy of Blaine occasioned the so-called Republican Independent movement. On the 3d of November, the election took place.

In five New England States, Cleveland received not a single electoral vote, yet nearly a quarter of a million of popular votes were cast for him. In five Western States,¹ 1,194,006, votes were cast for him, and 33 Democrats were elected to Congress, yet Blaine received the full 82 electoral votes of those States. In the States of California, Colorado, Nevada, and Oregon, Cleveland obtained 147,073 votes, and Blaine only 25,000 more, but Blaine received the 17 electoral votes. In Pennsylvania nearly

¹ Ohio, Michigan, Wisconsin, Illinois, and Iowa.

400,000 voters gave their support to the Democratic nominees and sent 8 Democrats to Congress, but their voice was not heard in the electoral college. Blaine and Logan also suffered from the unequal workings of the law. The State of New York cast its entire electoral vote for Cleveland though more than a half of million of its citizens had voted for the Blaine electoral ticket. The popular vote was never before so evenly divided. In New York, Cleveland, 563,048; Blaine, 562,001; Butler, 17,002; and St. John, 25,001. In Indiana the votes stood as follows: Cleveland, 244,992; Blaine, 238,480; Butler, 8,293; and St. John, 3,028. In the State of Connecticut the vote was as evenly divided.¹

On the 11th of February, 1885, at 12 M., the Senate and House of Representatives assembled in the hall of the House of Representatives for the purpose of counting the votes. The President *pro tempore* of the Senate, Edmunds, presided. The Speaker *pro tempore*, Blackburn, occupied the chair on the left. The count was merely formal, and the only incident that deserves to be mentioned was the remark of presiding officer Edmunds:

“And the President of the Senate makes this declaration only as a public statement, in the presence of the two Houses of Congress, of the contents of the papers opened and read on this occasion, and not possessing any authority in law to declare any legal conclusion whatever.”

When the Senate returned to its chamber, Mr. Edmunds was criticised by members of his party for his remarks. Cleveland had received 219 electoral votes and 4,911,017 popular votes, and carried 20 States; 18 States threw 182 electoral votes for Blaine, and 4,848,334 popular votes.

¹ Twenty-eight Republicans were elected to Congress in those three States.

On the 4th of March, 1885, with North and South reunited in a true and stronger bond of friendship, Grover Cleveland and Thomas A. Hendricks were inaugurated.

The Republican party, which had ruled the nation for twenty-four years, was displaced from power; and the Democratic party, which had been in political exile during that period, once more assumed the reins of government.

Thomas F. Bayard of Delaware became Secretary of State; Daniel Manning of New York, Secretary of the Treasury; William C. Endicott of Massachusetts, Secretary of War; William C. Whitney of New York, Secretary of the Navy; Lucius Q. C. Lamar of Mississippi, Secretary of the Interior; William F. Vilas of Wisconsin, Postmaster-General; Augustus H. Garland of Arkansas, Attorney-General. This cabinet remained intact until April 1, 1887, when Charles S. Fairchild of New York succeeded Mr. Manning as Secretary of the Treasury.

The presence of President Arthur at the inauguration ceremonies was a pleasing feature of the occasion. On the 25th of November following, Vice-President Hendricks suddenly passed away, and left the country exposed to all the evils of anarchy. There was no President *pro tem.* of the Senate, nor Speaker of the House. The danger was lessened by the near approach of the meeting of Congress; on which occasion John Sherman was chosen President *pro tem.* of the Senate, and John G. Carlisle, Speaker of the House. The necessity of changing the order of succession to the presidency became apparent to all. Many weighty objections were urged against the naming of the President of the Senate and Speaker of the House as possible occupants of the presidential chair. Among other objections it was said that they were not "officers" within the meaning of the

Constitution ; that the President of the Senate was not a permanent officer ; that the dual position of a man acting as presiding officer of an assembly while his acts as President of the United States were the subject of debate, was highly indelicate ; and finally, that there was no absolute certainty against a failure of succession. It was also urged with great force and justice that the officers named should be in accord with the political sentiments of the late President. The result of this feeling was the passage, in the Forty-ninth Congress, of an act changing the succession. The members of the cabinet in the order named in the bill were designated as the successors. Another important change was an enactment that the provisional President should perform the duties of President during the term for which the President and Vice-President had been elected. The doubt formerly raised as to the eligibility of a foreign-born " officer " to " act as President " was set at rest by the provision that only those members of the cabinet possessing the qualifications of a President, are eligible to succeed. An objection has been made to the bill, that no special provision is found in the case of a vacancy in the presidential office after election by the people and before the inauguration of the President-elect, caused by the death or other disability of the President- and Vice-President-elect. Vacancies may also occur before the confirmation of the new cabinet. According to this bill, the Secretary of State of the late administration " acts as President " for the next four years, because the commission of a cabinet officer does not expire with the term of the President who appointed him, but continues until his successor is appointed and confirmed. Again, in case of vacancies caused by the impeachment of the President and Vice-President, a member of the cabinet of the

impeached President will succeed, though that cabinet were *particeps criminis*. Thus would be set at nought the result of a long impeachment trial. The power behind the throne would sit on the throne. The grave and intricate problem of stating the consequences of a temporary inability or disability of a President was purposely left unsolved, nor was an attempt made to define the meaning and extent of those terms—"inability" and "disability."

To the Forty-ninth Congress also belongs the honor of passing an "electoral count bill." In a period of political calm, and under the impulse of patriotic motives, Congress has seized hold of these words: "and the votes shall then be counted"; and by legislation has established rules and regulations touching the conclusive character of an electoral certificate, and thereby limited the power of the Senate and House of Representatives during the progress of the counting of the electoral votes.

CHAPTER XXIV.

CONCLUSION.

THE journey of a hundred years is now completed. The "United States in Congress assembled" has become the constitutional Republic of the United States of America. The story of the nation is a narrative of unexampled progress in science, commerce, and education. In the domain of politics, the popular principle has prevailed in nearly all the States. Governors are chosen by the people. Proposed electors of President who were formerly nominated in many of the States by caucuses of members of State Legislatures, are now selected by conventions of the people in the various States, and are voted for in the election by the qualified voters. But the electoral system still remains with no reason for its continuation. The XIIth Amendment recognized and retained many of its objectionable features, from which spring many of the hidden dangers in the process of choosing a President. The meaning of any of these words: "State," "Manner," "Legislature," "Elector," may possibly precipitate the conflicts of future years. The first three may be considered together. The weight of authority¹ sustains the view that a resolution of the

¹ An examination of the records of the Legislatures of the various States from 1789 will show that with few exceptions the resolutions of a Legislature directing the manner of appointing electors have been transmitted to the governor.

two Houses of a Legislature directing the manner of appointing electors is not a complete act unless the State Constitution is followed as to the mode of expressing the legislative will. The resolution must take the course of a bill. Whether the manner directed by one Legislature with the approval of the governor can be changed by a subsequent Legislature without obtaining his approval or overruling his veto, presents an important question ; but, logically, the same answer must be given. Upon whom may be devolved the duty of selecting the electors? Many have thought that any person can perform that duty ; as a sheriff or justice of the peace. The Constitution does not admit of that construction. It does not say "each State is entitled to so many electors, who shall be appointed in the manner directed by the Legislature," but says "each State shall appoint."

The word "State" has several appropriate meanings in the Constitution ; the executive, judicial, or legislative branches of the government, or the political body entrusted with the ballot. The time may come when a State Legislature, under the control of an unpopular party, will, with the governor's consent or by overruling his veto, choose the electors. During the course of these pages we saw that many claimed that the exercise of this power in the past by State Legislatures was usurpation ; but its constitutionality has been sustained by many eminent men. James Wilson, a framer of the Constitution and one of the first five Associate Justices of the Supreme Court of the United States, advocated the popular district system in the Federal Convention ; yet, in his admirable lectures to law students in Philadelphia in 1790, said : "The electors will in all probability be appointed in one of the two following modes : by the citizens or by

the Legislature.”¹ The similarity of language in the Articles of Confederation and the Constitution, the adoption of this method in several States in early days without question as to its constitutionality, its implied ratification by successive Congresses, irresistibly leads to the conclusion of its constitutionality. An attempt to revive suddenly for a temporary party purpose the legislative plan, should be met with strong public disapprobation. The adoption by all the States of a permanent plan of choosing a President by State Legislatures, presents the question in another light. What are the qualifications of an elector? Who can tell? It has been said that an elector may be a citizen or an alien, a man or a woman, an Indian or a Chinaman. In a close election, votes cast by aliens or condemned criminals will be objected to on broad general principles of law. Where can the line be drawn? Must the elector be a citizen of the State which chose him as well as a citizen of the nation? The provision forbidding a State to appoint federal officeholders is mandatory and self-executing; and in the national government rests the duty of seeing that the law is obeyed.

The clause prescribing a House election still remains in the Constitution; a menace to popular government, a volcano in the political world. The fact that Nevada with sixty-five thousand people possesses the same power as New York with its five millions and a half, condemns the House election in the eyes of all fair-minded men. We are living under a system unsuited to our age and customs; a system which pre-supposes a lack of capacity in the people to select their chief magistrate. Reform is

¹ “The Works of James Wilson” at the Lorenzo Press, Phil., 1804, vol. ii., page 187.

needed in a system which arrays State against State, section against section. The voice of patriotism may be extinguished, and votes of citizens cast for one man are by a method of political arithmetic added to the votes cast for another man. The latter receives the entire vote of the State.

We must not think that past generations lived in utter indifference to the future welfare of the nation, and were contented to let things go smoothly on without providing for contingencies likely hereafter to arise. A disposition to find fault will be commendable perhaps, when the people of the present day show themselves as self-sacrificing and accomplish as much.

An historical review of the attempts to change the present system of choosing a President, will not prove un-instructive or uninteresting. The struggle that ended in the adoption of the XIIth Amendment has already been described. Very slight progress was, however made. The amendment was a virtual recognition of the existence of political parties, and was, in fact, a victory won by party leaders. The reform movement of the next quarter of the century aimed at the adoption of a uniform district system throughout the United States. The injustice of a House election was an after-thought. The State of North Carolina was foremost in the movement. Her Legislature proposed the district system in 1813, and again in 1816. Her Senators and Representatives were zealous in their efforts. The Senate of the United States, by a two-thirds vote of 22 to 9, agreed to such a proposed constitutional amendment.¹

In response to the North Carolina movement, the States of Massachusetts, Virginia, Connecticut, Pennsyl-

¹ February 18, 1813.

vania, New Hampshire, New York, and New Jersey sent to Washington, through their Senators, the favorable answer of their respective Legislatures.

In the closing session of the 15th Congress, a committee of five, Messrs. Dickerson, King, Mason, Edwards, and Barbour, reported the district plan, which on the 4th of February, 1819, passed the Senate by a vote of 28 to 10. The Senate again on January 27, 1820, by a vote of 29 to 13, gave a similar consent.

In the House of Representatives, however, the amendment did not meet with as favorable a reception. The members from the large States opposed it as tending to unsettle one of the compromises of the Constitution. A majority, but not a two-thirds vote, could be obtained.

The agitation subsided for a few years, but was renewed at the approach of the election of 1824. During the winter of 1823-24, numerous petitions were sent to Congress, praying for the adoption of the district system. The result of that election forced upon the public mind the injustice of a House election. In both Houses, in the first session of the 18th Congress, and in the first session of the 19th, propositions to amend were offered, committees appointed, able reports received, eloquent speeches delivered; yet after more than two and a half years of persistent agitation, the resolutions providing for a constitutional amendment were indefinitely postponed.

The speeches and labors of Benton and McDuffie, while these questions were before the public, are known to every student of political history. Their speeches are characterized by deep historical research and broad nationalism.

Benton, however, in the session of 1823-24, was unwilling to do away with a House election, but the events of 1825 showed him the great danger of such a mode.

In these speeches much space is devoted to the legality, and then the expediency, of a choice of electors by the Legislature under the present law. McDuffie, especially, portrayed in vivid language the injustice of an election in the House by States, and the danger of giving members of Congress the power of making a President.

In the first session of the 19th Congress the debate in the House was marked by much personal and sectional feeling. The Eastern men who supported Adams' administration were put on the defensive. It was known to all that much of the agitation was due to the disappointment resulting from the election of John Quincy Adams, and the Eastern men were therefore compelled to defend that system by which Adams obtained his office. The chief speaker in favor of the old law was Edward Everett, who was ably assisted by the member from Rhode Island. According to their view, it was unconstitutional and a violation of the federal compact to change essentially, and especially in a vital point, one of the compromises of the Constitution.

The clause forbidding the adoption of an amendment which would destroy State equality in the Senate, did not, they urged, authorize the adoption of amendments aimed at the subversion of the federative principle in other particulars. The State Legislature had an undoubted right to appoint the electors; the inequalities produced by the general-ticket system were no more than would be produced by the operation of the district system. Nearly all the members participated in the debate; some members from New York defended the general-ticket system, while few openly defended a House election by States. After many days spent in debate, McDuffie's resolution was divided into two parts and put to the vote of the House.

The motion "that a uniform system of voting by districts shall be established in all the States" was defeated by a vote of 102 to 90. On this question many members from the large States combined with the Eastern men, but the House, by a vote of 138 to 52, agreed to a resolution which took away from the two Houses the power of participating in eventual elections.

We may imagine how large a vote would be polled in favor of the same resolution if *now* presented to the House for consideration. A committee of twenty-four, one from each State, which was appointed to present a mode of election which would obviate any recourse to the Legislature, reported in May, 1826, that they were unable "to agree upon any specific plan."

Attempts to reform met the same fate in the Senate, but many an instructive lesson can be learned from remarks made by Senators whose names are known to all.

Van Buren declared that :

"There was no point on which the people of the United States were more perfectly united than upon the propriety, not to say indisputable necessity, of taking the election of President from the House of Representatives."

At that time, as at the present, it was useless to speak of amending the Constitution in that particular point only. Van Buren showed his sincerity and earnestness by his approval of the district system. In his speech of February 3, 1825, Benton alluded to a subject which has in our own day just received congressional interpretation :

"If, said he, electors are not appointed according to the Constitution, can their votes be counted? If objected to, who shall judge them? It is the duty of the two Houses to count

the votes. Can they count unconstitutional votes? If they cannot, shall they not judge every vote before it is counted?

Among the many services which Jackson rendered to the nation, we must include his efforts to change the law of election. In his first annual message he urged the necessity of amending the Constitution, and gave many convincing reasons for so doing. The institution of electors and a House election were strongly opposed by him. The general proposition was advanced, "that in proportion as agents to execute the will of the people are multiplied, there is danger of their wishes being frustrated; some may be unfaithful, all are liable to err."

The evils and dangers of a House election were portrayed in strong, yet not over-drawn language. Corruption, bribery, and honest mistakes were successively noticed. After premising that the election would be conducted according to the strict letter of the Constitution, without the least suspicion of corrupt practices, he gave his opinion that "it may reasonably be expected that efforts will be made on the part of the majority to rectify this injurious operation of their institutions." This protest against the continuance of such a mode of election was repeated in seven annual messages to the two Houses of Congress.

This solemn warning, from one who never indulged in unnecessary language, should have been heeded by his countrymen. During General Grant's administration the subject of presidential elections was prominently discussed.¹ Since that time no concerted party action has been exerted in behalf of reform in the law of election. The plan of choosing a President by the people of the

¹ See Chapter XIX.

States, in general ticket, and dividing the presidential votes in proportion to the voting strength of parties in the same, has been often proposed.

Closely allied to this subject is the "one-term" principle in the presidency, which has had many able advocates, notably Jackson, Clay, and Sumner. It is generally understood, however, that the "one term" will cover a period of six years.

It may be remembered that a period of seven years was always voted for in the federal convention whenever ineligibility was attached to the presidential office.

In the early days of the Republic the subject never assumed much importance, though it is worthy of remark that the State of New York proposed, through its constitutional convention, a one-term amendment. Frequent attempts had, however, been made to restrict the holding of the office to not more than eight years out of sixteen years, or to two successive terms; but during and since Jackson's era public attention has been directed more particularly to the advantages of a presidential term of six years with ineligibility.

General Jackson recommended it in his annual messages, the Whig party adopted it as one of its cardinal principles, and its candidate, General Harrison, in his speeches in the campaign, made repeated promises "to lay down at the end of the term faithfully that high trust at the feet of the people." The promise was repeated in his "inaugural."

The Mexican war and the slavery agitation drove the subject out of practical politics. Since the close of the civil war the subject has been revived on several occasions.

In December, 1871, Senator Sumner introduced a joint

resolution to amend the Constitution, which made the President eligible for a second term. The resolution was attacked by Senator Conkling, with his usual force and acumen. After impugning the motives of the Senator from Massachusetts, he reminded him that the Senate had been termed "the altar, not the staircase, of presidential hopes."

In the early part of the first session of the Forty-fourth Congress, January, 1876, an interesting debate was occasioned by a majority and minority report of the Judiciary Committee.

The main point of difference was the length of tenure if a President was to be ineligible. The highest vote obtained for any proposition was 145-108, and therefore the attempt was a failure.

Practical examples have been set by Governors Tilden and Cleveland in their letters of acceptance, declaring in favor of one term. The advantages of "one term" may be briefly stated. The removal of one temptation to abuse the patronage of the government in efforts to control the "make up" of a national convention. The placing of the civil service upon a firm and stable basis. The President would generally have no intense personal interest in the succeeding election, and instead of making every action of his turn upon its supposed influence upon that election, would quietly rule the country.

Many good measures fail to pass, and often bad measures succeed, on account of the near approach of a presidential election. The business of the country would be benefited by the occurrence of two instead of three presidential elections in twelve years. Capital is timid while the policy of an incoming administration is in doubt. Those who oppose the change present a strong case until they

touch the six-year clause. Their attack is levelled principally against the ineligibility of the President. The strength of their theory lies in its practical application. A member of the cabinet can, through the instrumentality of the President, do all those mischievous and injurious acts which, it is supposed, would not be committed by a President ineligible for a second term.

De Tocqueville, in his comments upon Democracy, expresses himself very forcibly against the re-election of a President.

We have thus seen that on none of the important subjects connected with the amendment of the Constitution has progress been made. Laudable individual efforts have been, however, exerted in favor of a change, but in vain. The general dissatisfaction with the present mode of choosing a president has led many thinkers to the conclusion that no half-way reform will suffice.

A plan singular in its character and directly opposed to the prevailing American sentiment has been proposed. Chance plays the chief part. The subject was brought into prominence by Hillhouse, of Connecticut, in the United States Senate in 1808, on the occasion of his remarkable speech in favor of changes in the Constitution.

The President was to be taken by lot from the members of the Senate who had the shortest time to serve, and was to hold his office one year. Hillhouse represented the discontent of the New England Federalist leaders, who attributed the prevailing distress of the country and the spread of the Republican party to the abuse of government patronage.

Old John Adams declared that the lottery plan "reduces the President's office to that of a mere Doge of

Venice, a mere head of wood, a mere tool of the aristocracy of the country."

Twenty years later Hillhouse received from Chief-Justice Marshall and William H. Crawford, letters favoring his plan. Marshall wrote :

"We shall no longer be under the banners of particular men. Strife will no longer effect its object ; neither the people at large nor the councils of the nation will be agitated by the all-disturbing question, Who shall be President ? Reasoning *a priori*, I should undoubtedly pronounce the system adopted by the convention the best that could be devised. Judging from experience, I am driven to a different conclusion." ¹

In 1877 Mr. Charles O'Connor, in his memorable address "On the Constitution," said that the presidential office should not be elective, but should be filled by lot every month from the Legislature. The deeply thought-out plan of Judge Nicholson, of Kentucky, brings into play many systems and methods, but is impracticable and unpopular.² All these plans are chimerical and visionary. The country demands a substantial reform. In 1877 President Barnard, of Columbia College, suggested the following plan. The lower House of each Legislature might resolve itself into committees, equal in number to the number of Congressional districts in the State. Each committee was to be composed of all the delegates from a particular Congressional district and to have power to cast one presidential vote. The Senatorial electors were to be chosen by the State Senate or dispensed with altogether.³ Again, in 1885, President Barnard expressed his opinion and said :

¹ *Harper's Weekly*, April 28, 1877.

² Senator Powell introduced the plan in the Senate in February, 1869.

³ *New York Tribune*, May 26, 1877.

"I am compelled to avow it as my most profound conviction, that the only assured security for the future possible to us against the formidable dangers that surround the question, is to be found in a return to the plan of placing the election of the President in the hands of the National Legislature, which commended itself so strongly to the wisdom of the fathers. Congressmen represent, as the electors of the present system do not, the people of limited districts. . . . It may be said that the caucus would replace the convention ; but the caucus of the dominant party will in such case become itself the electoral body. Congress affords us an Electoral College in which the theory of the fathers of the Constitution is a reality. Moreover, since it would be impossible, by any process, to bring together an equal number of men more capable of representing the party interests or the party intelligence, it is certain that we cannot expect from any other electoral body, however constituted, a more judicious or satisfactory appointment of a President." ¹

Political bodies never relinquish power voluntarily. The stern logic of history tells us that neither the peoples nor Legislatures of the States can be persuaded to increase the power and importance of the National Legislature, even at the price of internal peace and happiness. It has been urged against this plan that an unworthy man might be forced upon the people of a congressional district through ¹ fear of losing a vote in the House of Representatives when choosing a President. An election by the National Legislature might result in a weak and dependent President, unable to withstand its unwise or unconstitutional acts, or to exercise the powers and privileges of the executive office. Changing the fundamental law of the land,

¹ See February number, 1885, of *North Amer. Review*, for interesting discussion of this subject by President Barnard, Senators Dawes and Vance, and Messrs. Pryor and Purcell.

and thereby shifting political power, is a most delicate act of sovereignty. Many interests must be consulted. The small States, who hold more than the balance of power in our constitutional system, are stubborn and tenacious of their so-called vested rights. The agitation for the abolition of the House election by States, will not begin in the small States, but must be forced upon them. Moreover, they will not peacefully surrender their great power without some equivalent; and that equivalent can, I firmly believe, be found in the establishment throughout the United States of a uniform district system,¹ a system approved by illustrious statesmen of all parties: Hamilton and Jefferson, the elder Bayard and Gallatin, the second Adams and Madison, Webster and Story, Benton and Morton,—a system which gives to every party in a State and every interest in a State, its relative influence in the nation.

But will the leaders of the two great political parties co-operate in the good work? If not, discussion is almost useless. Brave, patriotic, and magnanimous will be the party which will inscribe on its banner, "Reform is needed in presidential elections." The interests of sixty millions of people are at stake. If the small States refuse to yield their strict legal rights for the general good, then we are in the condition of the people of England during the days of the borough system. Reform is not possible¹ in these quiet times. Some great and grievous wrong must be perpetrated before a change can be effected. The people must be legally robbed of the presidency two or three times before they will take an interest in the subject. Yet the lessons taught should not be forgotten, the warnings given should not go unheeded.

¹ In Chapter XIX. is found a statement of the relative merits of the plans of Benton and Morton.

APPENDIX A.

HAMILTON TO JAY.

NEW YORK, May 7, 1800.

DEAR SIR :

You have been informed of the loss of our election in this city. It is also known that we have been unfortunate throughout Long Island and in Westchester. According to the returns hitherto, it is too probable that we lose our Senators for this district. The moral certainly therefore is, that there will be an anti-federal majority in the ensuing Legislature ; and the very high probability is, that this will bring *Jefferson* into the chief magistracy, unless it be prevented by the measure which I shall now submit to your consideration, namely, the immediate calling together of the existing Legislature. I am aware that there are weighty objections to the measure, but the reasons for it appear to me to outweigh the objections ; and in times like these in which we live, it will not do to be over-scrupulous. It is easy to sacrifice the substantial interests of society by a strict adherence to ordinary rules. In observing this, I shall not be supposed to mean, that any thing ought to be done which integrity will forbid, but merely that the scruples of delicacy and propriety, as relative to a common course of things, ought to yield to the extraordinary nature of the crisis. They ought not to hinder the taking of a legal and constitutional step to prevent an atheist in religion, and a fanatic in politics, from getting possession of the helm of state. You, sir, know in a great degree the anti-federal party ; but I fear you do not know them as well as I do. It is a composition, indeed, of very incongruous materials, but all tending to mischief—some of them to the *overthrow* of the *government*, by

stripping it of its due energies ; others of them, to a *revolution* after the manner of *Bonaparte*.

I speak from indubitable facts, not from conjectures and inferences. In proportion as the true character of the party is understood, is the force of the considerations which urge to every effort to disappoint it ; and it seems to me, that there is a very solemn obligation to employ the means in our power. The calling of the Legislature will have for its object the *choosing of electors by the people in districts* ; this (as Pennsylvania will do nothing) will insure a majority of votes in the United States for a federal candidate. The measure will not fail to be approved by all the federal party ; while it will, no doubt, be condemned by the opposite. As to its intrinsic nature, it is justified by unequivocal reasons of *public safety*.

The reasonable part of the world will, I believe, approve it. They will see it as a proceeding out of the common course, but warranted by the particular nature of the crisis, and the great cause of social order. If done, the motive ought to be frankly avowed. In your communication to the Legislature, they ought to be told that temporary circumstances had rendered it probable that, without their interposition, the executive authority of the general government would be transferred to hands hostile to the system heretofore pursued with so much success, and dangerous to the peace, happiness, and order of the country ; that under this impression, from facts convincing to your own mind, you had thought it your duty to give the existing Legislature an opportunity of deliberating whether it would not be proper to interpose, and endeavor to prevent so great an evil by referring the choice of electors to the people distributed into districts.

In weighing the suggestion, you will doubtless bear in mind that popular governments must certainly be overturned, and, while they endure, prove engines of mischief, if one party will call to its aid all the resources which vice can give, and if the other (however pressing the emergency) confines itself within

all the ordinary forms of delicacy and decorum. The Legislature can be brought together in three weeks, so that there will be full time for the object ; but none ought to be lost.

Think well, my dear sir, of this proposition—appreciate the extreme danger of the crisis ; and I am unusually mistaken in my view of the matter, if you do not see it right and expedient to adopt the measure.

Respectfully and
affectionately yours &c.

APPENDIX B.

EDITORIAL IN THE PHILADELPHIA FREEMAN'S JOURNAL,
NOVEMBER, 1808.¹

IT is supposed that a question will arise in Congress, when assembled in joint convention to receive and count the votes for President and Vice-President, whether the electoral votes of Massachusetts shall be received. The Constitution of the United States has declared that each House shall be the judge of the elections, returns, and qualifications of its own members, but has created no tribunal to judge in the case of the election of President and Vice-President, nor has any such tribunal been created by law. Indeed it would be extremely questionable whether such a law would be constitutional. There is, however, a law of the United States upon the subject of the election of President and Vice-President, which, after recognizing the constitutional right of the State Legislatures to direct the appointment of electors, declares that the votes of the electors thus appointed shall be received and counted by the two Houses of Congress.

But there is another provision in the law, which, it is supposed, will affect the present case. Although it is peremptorily enacted that the electors shall meet, give their suffrages, and transmit them to the seat of the general government without the intervention of any other power or person whatever, yet it is made the duty of the executive of each State to furnish the electors with a certificate containing the evidence of their appointment ; but no penalty is consequent upon the neglect or

¹ Found in *Columbian Centinel*, November 16, 1808.

refusal of the State executives to perform this act, and it is not declared that the votes shall be rejected if they come unaccompanied by the certificate. Certainly Congress possesses no constitutional power to punish a branch of the State government for refusing to obey its mandates, and, of course, it would be absurd in the extreme to say that the vote of a State must be lost because the governor may not choose to perform an act which Congress had no power to command him to perform. Congress has power to pass all laws necessary and proper to carry into effect the powers vested in the general government; but with the election of President and Vice-President they have nothing to do, as the Congress of the United States, but to collect and count the votes, and declare the persons elected upon a fair construction of the United States' Constitution. Congress can only require evidence of the authority, under which the electors act, from the electors themselves, or from the State Legislatures, which are empowered to direct the mode of appointment. It is evident, however, that cases may occur in which Congress must, from the necessity of the thing, exercise a species of judicial authority in reference to this election. Two distinct electoral bodies might meet in the same State, each claiming to be the constitutional one, and, of course, demanding that its own vote should be received to the exclusion of the other.

In this case Congress must determine which was the genuine electoral board, and, of course, must act, *quoad hoc*, as a judge of the election. Hence it will be contended, with plausibility at least, that Congress may in all cases undertake to determine whether the persons claiming to be considered as electors were constitutionally and legally appointed. It is expected that the governor of Massachusetts will withhold the certificate, of which we have been speaking, under the idea that the electors of that State are not appointed agreeably to the Constitution of the United States, it being understood that the two branches of the State Legislature intend to

choose the electors without requiring the co-operation of the executive.¹

The Constitution of the United States provided that each State shall appoint a certain number of electors in such manner as the Legislature shall direct, and that two Senators shall be chosen in each State by the Legislature thereof.

It has never been supposed that the executive of a State was entitled to any agency, direct or indirect, in the election of Senators of the United States, and it is obvious from the adoption of the same mode of expression in the two cases that the State authority which should elect the senators and direct the mode of appointing electors was contemplated by the framers of the Federal Constitution to be one and the same.² The Constitution of the United States, in declaring that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives," has clearly indicated that in the contemplation of its framers the executive was not considered as a component branch of the Legislature. *Expressio unius est exclusio alterius*. By vesting all legislative power in the representatives of the States and of the people the executive is excluded from the exercise of any legislative power. As the Constitution, however, is a system of checks and balances, the executive is constituted a sort of check and balance, and has a qualified veto on the proceedings of the Legislature. Bills, before they can become laws, must receive the approbation of the President, or be enacted by two-thirds of both Houses of Congress.

All legislative powers, therefore, strictly speaking, are vested in two thirds of both branches of the national Legislature; for by the exercise of their will bills become laws, the constitutional negative of the President, to the contrary, notwithstanding. The President, in exercising his veto, does not act as a legislator, but performs an executive function—that of

¹ See page 100.

² Contrary view is taken on page 247.

checking the Legislature in a certain manner and to a certain extent. It is of the essence of legislation to originate, deliberate, adopt, or reject, but the *executive*, in the formation of a law, can originate nothing. Deliberation, as applied to legislative proceedings, in republican governments, can only be considered as the act of a number of a body of representatives; the spirit of republicanism, excluding every idea of legislation, by *one* which is the appropriate characteristic of despotism. These principles are applicable to the constitution of the several States as well as to that of the United States. It will follow then, that if the electors of Massachusetts are appointed by the Senate and House of Representatives of that State, that they are appointed "in such manner as the Legislature thereof may direct," and, of course, appointed agreeably to the Constitution of the United States. If they assemble, give their votes and forward them to the seat of general government, although they should not be accompanied by a certificate from the governor, they must be received, for the same law which directs that the governor shall give such a certificate, a duty which the national Legislature had no right to require him, and has not undertaken to compel him to perform, has also declared that the votes of the electors shall be received and counted, a provision which it was clearly competent to make. It is not to be assumed, therefore, that Congress will reject the votes of Massachusetts, under circumstances of this description, as in doing so, it would be guilty of a daring violation of the constitutional rights of that State, and a gross usurpation of undelegated power.

APPENDIX C.

CONSTITUTION OF THE UNITED STATES.

ARTICLE II., Section I :

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows :

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress : but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

(3.)¹ The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves ; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate ;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted ; the person having the greatest number of votes for President shall be the President, if such number be the majority of the whole number of

¹ This is the XIIth Amendment to the Constitution. It appears here in the place of subdivision 3 of the old Constitution.

electors appointed ; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote ; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President ; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.¹

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

5. No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

¹ End of the XIIth Amendment.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.¹

¹ The XIVth Amendment is found on p. 175.

APPENDIX D.

EXISTING LEGISLATION OF CONGRESS.

SEC. 131.—The electors of President and Vice-President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice-President.¹

SEC. 132.—The number of electors shall be equal to the number of Senators and Representatives which the several States are by law entitled at the time when the President and Vice-President to be chosen come into office; except that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives.

SEC. 133.—Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.

SEC. 134.—Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.

SEC. 137.—The electors shall vote for President and Vice-President, respectively, in the manner directed by the Constitution.

SEC. 138.—The electors shall make and sign three certificates of all the votes given by them, each of which certificates

¹ This and the following sections are taken from the Revised Statutes of the United States.

shall contain two distinct lists, one of the votes for President, and the other of the votes for Vice-President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State.

SEC. 139.—The electors shall seal up the certificates so made by them, and certify upon each that the lists of all the votes of such State given for President, and of all the votes given for Vice-President, are contained therein.

SEC. 140.—The electors shall dispose of the certificates thus made by them in the following manner: One. They shall by writing under their hands, or under the hands of a majority of them, appoint a person to take charge of and deliver to the President of the Senate at the seat of government, before the first Wednesday in January then next ensuing, one of the certificates. Two. They shall forthwith forward by the post-office to the President of the Senate, at the seat of government, one other of the certificates. Three. They shall forthwith cause the other of the certificates to be delivered to the judge of that district in which the electors shall assemble.

SEC. 141.—Whenever a certificate of votes from any State has not been received at the seat of government on the first Wednesday in January, indicated in the preceding section, the Secretary of State shall send a special messenger to the district judge, in whose custody one certificate of the votes from that State has been lodged, and such judge shall forthwith transmit that list to the seat of government.

SEC. 143.—In case there shall be no President of the Senate at the seat of government on the arrival of the persons intrusted with the certificates of the votes of the electors, then such persons shall deliver such certificates into the office of the Secretary of State, to be safely kept, and delivered over as soon as may be to the President of the Senate.

SEC. 144.—Each of the persons appointed by the electors to deliver the certificates of the votes to the President of the

Senate shall be allowed, on the delivery of the list intrusted to him, twenty-five cents for every mile of the estimated distance, by the most usual road, from the place of meeting of the electors to the seat of government of the United States.

SEC. 145.—Every person who, having been appointed, pursuant to subdivision one of section one hundred and forty, or to section one hundred and forty-one, to deliver the certificates of the votes of the electors to the President of the Senate, and having accepted such appointment, shall neglect to perform the services required of him, shall forfeit the sum of one thousand dollars.

SEC. 151.—The only evidence of a refusal to accept, or of a resignation of the office of President or Vice-President, shall be an instrument in writing, declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the Secretary of State.

PRESIDENTIAL SUCCESSION ACT OF 1886.

An act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice-President.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case of removal, death, resignation, or inability of both the President and Vice-President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Treasury, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, death, resignation, or inability, then the Attorney-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be

none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice-President is removed or a President shall be elected: *Provided*, That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within twenty days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving twenty days' notice of the time of meeting.

SEC. 2.—That the preceding section shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the offices therein named, and such as are eligible to the office of President under the Constitution, and not under impeachment by the House of Representatives of the United States at the time the powers and duties of the office shall devolve upon them respectively.

SEC. 3.—That sections one hundred and forty-six, one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, and one hundred and fifty of the Revised Statutes are hereby repealed.

Approved, January 19, 1886.

ELECTORAL COUNT BILL OF 1887.

An act to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the electors of each State shall meet and give their votes on the

second Monday in January next following their appointment, at such place in each State as the Legislature of such State shall direct.

SEC. 2.—That if any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to the said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

SEC. 3.—That it shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of electors in such State, by the final ascertainment under and in pursuance of the laws of such State providing for such ascertainment, to communicate, under the seal of the State, to the Secretary of State of the United States, a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast ; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by the preceding section to meet, the same certificate, in triplicate, under the seal of the State ; and such certificate shall be inclosed and transmitted by the electors at the same time and in the same manner as is provided by law for transmitting by such electors to the seat of government the lists of all persons voted for as President and of all per-

sons voted for as Vice-President ; and section one hundred and thirty-six of the Revised Statutes is hereby repealed ; and if there shall have been any final determination in a State of a controversy or contest as provided for in section two of this act, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate, under the seal of the State, to the Secretary of State of the United States, a certificate of such determination, in form and manner as the same shall have been made ; and the Secretary of State of the United States, as soon as practicable after the receipt at the State Department of each of the certificates hereinbefore directed to be transmitted to the Secretary of State, shall publish, in such public newspaper as he shall designate, such certificates in full ; and at the first meeting of Congress thereafter he shall transmit to the two Houses of Congress copies in full of each and every such certificate so received theretofore at the State Department.

SEC. 4.—That Congress shall be in session on the second Wednesday in February succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of one o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A ; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates ; and the votes having been ascertained and counted in the manner and according to the rules in this act provided, the result of the same shall be delivered to the President of

the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice-President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision ; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision ; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section three of this act from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section two of this act to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State ; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as

mentioned in section two of this act, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its laws ; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the Executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

SEC. 5.—That while the two Houses shall be in meeting as provided in this act the President of the Senate shall have power to preserve order ; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw.

SEC. 6.—That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once ; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

SEC. 7.—That at such joint meeting of the two Houses seats shall be provided as follows : For the President of the Senate, the Speaker's chair ; for the Speaker, immediately upon his left ; the Senators, in the body of the Hall upon the right of the presiding officer ; for the Representatives, in the body of the Hall not provided for the Senators ; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk ; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared ; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of ten o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House.

Approved February 3, 1887.

NOTE.

Complete tables of electoral votes from 1789 to 1876, and of popular votes from 1824 to 1876, are found in "The American Almanac and Treasury of Facts" for 1878. Library edition. Edited by Ainsworth R. Spofford. Also in the same work, but credited to the *Statistician*, San Francisco, 1877, are minute tables of popular votes given for all persons, including third party and independent candidates.

Popular votes by counties, from 1836 to 1868, are found in "The American Year Book and National Register for 1869," by David M. Camp, pp. 668-737, Hartford.

The curious will discover in the "Dictionary of the United States Congress," by Charles Lanman, 1864, pp. 428-473, a complete list of the names of all the electors of President and Vice-President from 1789 to 1864.

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